



**PRECARIR  
VS/2014/0534**

**PRECARIR:** The rise of the dual labour market: fighting precarious employment in the new member states through industrial relations, project no. VS/2014/0534

## **Poland: Country report**

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## **Executive summary**

### **Project's goals**

The project investigates the role of industrial relations in addressing the changing labour market and, in particular, the growth of precarious work. The analysis focuses on the initiatives, responses, and best practices that trade unions and employers' associations developed in addressing precarious work in the post-2008 period. The report uses a qualitative and comparative approach to study the dimensions of precarious employment, including low pay, irregular working hours, low job security and limited representation of workers' rights. This two-dimensional approach to precarious employment allows mapping differences in the following sectors: construction, healthcare, metal/automotive, retail and temporary agency work (TAW)

### **Dual labour market in Poland**

The labour market dualisation in Poland is manifested in a very high share of temporary employment, a high number of people working on the basis of civil law contracts as their main source of income, and a high share of employees earning less than a minimum wage. The forms of employment precarisation differed in the sectors studied, including, for instance, bogus self-employment and unregistered work in construction, low wages in the retail sector, bypassing the regulations on temporary agency work in steelworks and the TAWs sector and hybrid employment and work intensification in health care.

### **Responses of social partners to precarious employment**

The most of social partners' responses to the dualisation of labour market have been observed at the national level and the majority of initiatives focused on legislative changes to limit the extent of precarious work. In all sectors, the leverage of collective bargaining on counteracting precarisation is rather limited. However, some interesting initiatives were identified, including the negotiated estimate minimum wage in construction, the proposal of wage tariffs in health care and the establishment of a tripartite expert team in the TAW sector. The most relevant, union-led initiatives included social campaigns against precarious work in the retail sector and the trade union organising of subcontractors in the steelwork sector.

### **Policy implications**

The crucial policy implications formulated by the Polish team of the project include the necessity for a greater state and social partners' support for bi-partite and tripartite social dialogue aimed at counteracting the negative effects of the dual labour market. The social problems related to precarious employment can be minimised only by a decisive shift towards employment policies which would explicitly promote high quality jobs in all sectors.

## **WNIOSKI Z PROJEKTU: PODSUMOWANIE**

### **Cele projektu**

Badania w projekcie dotyczą znaczenia stosunków przemysłowych dla zmian zachodzących na rynku pracy, w szczególności - wzrostu pracy prekaryjnej. Analiza skupia się na inicjatywach, działaniach i najlepszych praktykach rozwijanych przez związki zawodowe i organizacje pracodawców wobec pracy prekaryjnej po 2008 roku. Raport wykorzystuje podejście jakościowe i porównawcze w celu zbadania wybranych wymiarów prekaryjnego zatrudnienia, w tym niskich płac, nieregularnych godzin pracy, niskiego bezpieczeństwa pracy i ograniczonej reprezentacji praw pracowniczych. To dwuwymiarowe podejście do prekaryjnego zatrudnienia pozwala na wskazanie zróżnicowania w branżach, takich jak budownictwo, służba zdrowia, przemysł stalowy, handel i agencje pracy tymczasowej (APT).

### **Dualny rynek pracy w Polsce**

Dualizacja rynku pracy w Polsce przejawia się w bardzo wysokim odsetku zatrudnionych czasowo, znacznej liczbie osób uzyskujących swój główny dochód za sprawą umów cywilnoprawnych, a także wysokim udziale pracowników zarabiających poniżej płacy minimalnej. W badanych branżach obserwowano zróżnicowane formy prekaryzacji zatrudnienia, w tym na przykład pozorne samozatrudnienie i pracę nierejestrowaną w budownictwie, niskie płace w handlu, omijanie regulacji prawnych dotyczących APT w hutnictwie i sektorze APT, a także hybrydowe zatrudnienie i intensyfikację pracy w służbie zdrowia.

### **Działania partnerów społecznych wobec zjawiska prekaryjnego zatrudnienia**

Działania partnerów społecznych wobec dualizacji rynku pracy obserwowane są przede wszystkim na poziomie krajowym, przy czym większość z nich koncentruje się na zmianach w prawie, których celem byłoby ograniczenie zasięgu pracy prekaryjnej. We wszystkich badanych branżach wpływ rokowań zbiorowych na przeciwdziałanie prekaryzacji zatrudnienia jest raczej ograniczony. Zidentyfikowano jednak kilka interesujących inicjatyw trójstronnych, w tym porozumienie o minimalnej godzinowej stawce kalkulacyjnej w budownictwie, propozycję tariff płacowych w służbie zdrowia i ustanowienie trójstronnego zespołu eksperckiego w branży APT. Najistotniejsze inicjatywy związkowe objęły kampanie społeczne przeciw pracy prekaryjnej w handlu oraz organizowanie związków zawodowych w firmach podwykonawczych w hutnictwie.

### **Wnioski dotyczące polityk społecznych**

Kluczowe wnioski praktyczne sformułowane przez zespół polski dotyczą konieczności większego wsparcia ze strony państwa i partnerów społecznych dla rozwoju dialogu społecznego (w formule dwu- i trójstronnej), którego celem byłoby przeciwdziałanie negatywnym efektom dualizacji rynku pracy. Problemy społeczne związane z prekaryjnym zatrudnieniem mogą zostać zmniejszone jedynie za sprawą zdecydowanych reform polityk zatrudnienia w celu promowania powstawania wysokiej jakości miejsc pracy we wszystkich branżach.

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## 1. Introduction

This report addresses the mechanisms of rise of the dual labour market, and especially the growth of precarious work, as well as the role that industrial relations institutions, processes and outcomes are playing in fighting precarious employment in Poland. The notion of dual labour market, or, more broadly, labour market segmentation, assumes the division of the labour force into more and less privileged categories of workers due to a range of structural, institutional, organisational and cultural factors, as well as workers' characteristics that go beyond their marketable skills (Doeringer and Piore, 1971; Edwards 2002; Kozek 2013). The theories of labour market segmentation challenge the assumption of neoclassical approaches about the existence of universal mechanisms of workers' allocation to jobs based on market supply-demand mechanisms. In accordance with the PRECARIR project analytical framework, we understand the precarisation of employment as the mechanisms which create, reproduce and possibly extend the disadvantaged segment(s) of labour market in terms of (1) low wages (2/3 of median gross hourly wages), (2) limited or no social security entitlements (3) low job security, and (4) other labour conditions less favourable than in standard employment contracts regulated e.g., limited access to training (Kahancová and Martišková, 2014).

Even though labour market segmentation existed in state socialism, the mechanisms of its creation and reproduction were predominantly linked to the administrative distribution of wages, social benefits and access to rare goods and services (Mach et al. 1994). In the centrally-administered economy based on the principles of full employment, the issue of job and employment security was less relevant for the creation of precarious conditions. The sectoral line of division disadvantaged those employed in light manufacturing, services, agriculture, trade and public administration against those in core state-owned factories in heavy industry. Skilled, male, blue-collar workers in core state-owned enterprises, engineers, managerial cadres and communist Party nomenclature earned significantly more than women employees, peasant-workers (*chłoporobotnicy*), agricultural workers and blue-collar employees in vestigial private sector.

Following system change in 1989, the existing labour market segmentation, even if partially retained under capitalist conditions, acquired new meanings as a result of their interaction with new institutional and capitalist-market rules. Arguably, new dimensions of the precarisation of employment after 1989 were related to (1) the rapid increase of unemployment and the emergence of job and employment insecurity as a consequence of the restructuring and privatisation of state-owned enterprises and public services; (2) the variety of measures aimed at putting pressure on wages and social security and, more recently flexibilising employment, to maintain the Polish economy competitiveness and counteract job losses (Maciejewska, Mrozowski, Piasna 2016); (3) the weakness of industrial relations actors and institutions, including low union and employer organisations density, the emergence of very low unionised private sector and union focus on employees with stable, employment contracts, strongly decentralised collective bargaining and "illusory corporatism" at the national level that could not hamper the expansion of precarious jobs (Ost 2011); (4) the side effects of the systemic adjustment of the Polish labour law to the European Union regulations and European employment strategies which focused on flexible employment; (5) economic instability related to the economic slowdown of the early 2000s and the global economic crisis of the late 2000s which triggered both bottom-up adaptive practices of employers aimed at counteracting instability by using flexible job contracts and top-down anti-crisis measures including those focused on supporting temporary, flexible employment.

Importantly, the policies of labour market flexibilisation were carried out regardless of the ideological line of governments in power (cf. Kozek 2013: 232-237). The ideas to support

flexible employment appeared for the first time in the “Programme for Promoting Productive Employment and Decreasing Unemployment” elaborated in 1997 by the government led by the coalition of the left-wing Democratic Left Alliance and the Polish People’s Party (PSL). They re-emerged in the Labour Code reforms adapted by the government led by the Democratic Left Alliance in 2003-2004, in the (never enacted) proposals of a new Labour Code discussed in 2005-2007, at the time of the right-wing conservative Law and Justice in power, as well as in the anti-crisis legislation implemented by right-wing liberal/centrist coalition of the Polish People’s Party and Civic Platform (2007-2015).

As argued by Nölke and Vliegenthart (2009: 672), relatively low labour costs and medium level of labour market flexibility become permanent features of the “dependent market economy” developed in the course of capitalist reforms in Poland whose “comparative advantages are based on institutional complementarities between skilled, but cheap, labor, the transfer of technological innovations within transnational enterprises, and the provision of capital via foreign direct investment (FDI).” However, the sharp increase in share of temporary employment was not just an outcome of political strategies, legal changes and economic ideologies of successive governments. It was also the result of spontaneous adaptive practices of employers who resorted to atypical contracts to cope with unstable economic context and frequently changing legal regulations, as well as trade union actions which for a long time were predominantly focused on their existing membership rather than the expansion to non-unionised, private companies. In short, the emergence and reproduction of the dual labour market with continuously expanding, precarious peripheries exercising competitive pressure on core workforce was an important and not fully unexpected consequence of both top-down and bottom up practices of capitalist transformation in Poland.

The question of how the emergence of dual labour market and precarious employment can be counteracted by social dialogue lies in the centre of this report. In its first part, the main legal and labour market characteristics related to the particular forms of precarious employment in Poland are discussed and the evidence on the developments in precarious employment in Poland is presented. In particular, we focus on the distinction between (1) standard, full-time, open-ended, labour employment contracts as a benchmark; (2) non-standard labour employment contracts, including part time employment and temporary employment contracts; (3) non-labour employment contracts (civil law contracts) and self-employment. Separately, we also discuss temporary agency work (which can be either based on labour employment or non-labour, civil law employment), as well as low-paid employment as a specific type of precarisation which cuts across various contractual arrangements. In the second part of the report, social partners’ responses to precarious employment are presented based on the case studies of five sectors: health care, steelworks (as the selected case within the metal sector), construction, retail, and temporary work agencies. Comparative evaluation and conclusions follow.

## **1.1. Methodological note**

This report is based on both primary and secondary data. The primary data was collected between April 2015 and February 2016 and consist of 21 semi-structured, expert interviews with the representatives of national and sectoral trade unions, employer organisations, the representatives of ministries and academic experts. In total, we have interviewed 29 informants during 21 interview sessions. Except for one case in which the consent for recording was not given and instead notes were taken, most of the interviews were recorded and transcribed. In the most of the sectors, we managed to collect interviews with the representatives of both trade unions and employer organisation. In the steelwork sector, a written refusal to be interviewed was presented by the employer organisation (The

Association of Steelworks Employers, PZPH). In the health care sector, we did not receive reply from employer organisations and instead we interviewed the representative of the Ministry of Health. The complete list of interviews can be found in table 1.

As far as secondary data are concerned, we have used publicly available sources such the website and the yearbooks of the Central Statistical Office (GUS) in Poland, the reports by the National Labour Inspectorate and the Labour Force Surveys and the Structural Business Statistics on the Eurostat website. We have also reviewed media and academic reports on employment trends in the sector studied. All sources are listed in the literature list at the end of the report.

**Table 1. The list of interviews carried out for the sake of the PRECARIR project in Poland**

No.	Code	Sector	Interviewee's name	Affiliation	Date of the interview
1.	[I1]	Health care	Maria Ochman	Independent Self-Governing Trade Union Solidarity (NSZZ Solidarność), Chairwoman of the National Secretariat of Health Care (KSOZ)	25.05.2015
2.	[I2]	Health care	Liliana Pietrowska	All-Poland Trade Union of Nurses and Midwives (OZZPiP), Chairwoman of the Lower Silesia Region	6.05.2015
3.	[I3]	Health care	Jakub Bydłoń	Director of the Department of Social Dialogue in the Ministry of Health	24.06.2015
4.	[I4]	Steelworks (metal)	Adam Ditmer	Independent Self-Governing Trade Union Solidarity (NSZZ Solidarność), Chairman of the National Section of Steelworks (SKH)	7.05.2015
5.	[I5]	Steelworks (metal)	Jerzy Goiński, Lech Majchrzak	Independent Self-Governing Trade Union Solidarity (NSZZ Solidarność), Chairman (J.Goiński) and Vice-Chairman (L.Majchrzak) of Inter-Company Trade Union Organisation in ArcelorMittal Poland (Steelwork in Dąbrowa Górnicza)	20.05.2015
6.	[I6]	Steelworks (metal)	Krzysztof Wójcik, Józef Kawula, Halina Szpakowska, Tomasz Ziolek	Independent Self-Governing Trade Union of the ArcelorMittal Poland Employees, the Chairman (K. Wójcik) and Vice-Chairmen of the Company Commission (Huta Sędzimir, Kraków) (an affiliate to OPZZ, the All-Poland Alliance of Trade Unions)	15.05.15
7.	[I7]	Construction	Rafał Bałdys	Vice-president of the Polish Association of Construction Employers (PZPB)	25.05.2015
8.	[I8]	Construction	Waldemar Mazan	Vice-President of Confederation of Construction and Real Estate	26.10.2015
9.	[I9]	Construction	Zbigniew Majchrzak	Independent Self-Governing Trade Union Solidarity (NSZZ Solidarność), the Chairman of Construction Industry National Section (SKB) and the Chairman of the National Secretariat of Construction and Wood Industry	7.05.2015



				(KSBiPD)	
10.	[I10]	Retail	Alfred Bujara	Independent Self-Governing Trade Union Solidarity (NSZZ Solidarność), Chairman of the National Section of Commerce Employees (SKPH) and the National Secretariat of Banks, Commerce and Insurance (KSBHiU)	24.04.2015
11.	[I11]	Retail	Andrzej Maria Faliński	Chief Executive Officer of the Secretariat of Polish Organisation of Trade and Distribution (POHiD)	25.05.2015
12.	[I12]	Retail	Danuta Pietrzyk	Independent Self-Governing Trade Union Solidarity (NSZZ Solidarność), Vice-Chairwoman of the Company Commission in Tesco Poland.	13.10.2015
13.	[I13]	Retail	Elżbieta Fornalczyk	Free Trade Union August'80 (WZZ Sierpień 80), vice-chairwoman of the National Commission; Chairwoman of Inter-company Trade Union Organisation in Tesco	15.05.15
14.	[I14]	Temporary work agencies	Anna Reda-Ciszewska	Independent Self-Governing Trade Union Solidarity (NSZZ Solidarność), legal expert in the National Commission	22.05.2015
15.	[I15]	Temporary work agencies	Agnieszka Zielińska	Head Manager of the Polish HR Forum	22.05.2015
16.	[I16]	National level (government)	Janina Suzdorf, Piotr Pęcak, Tomasz Jegier, Katarzyna Balsam	Ministry of Labour and Social Policy <sup>1</sup> , the Head of the Department of Labour Law (J.Suzdorf), Department of Economic Analysis and Prognosis (T.Jegier), Department of Social Dialogue and Partnership (K. Balsam)	26.10.2015
17.	[I17]	National level (trade unions)	Jakub Grzegorzczak, Katarzyna Rakowska	All-Poland Trade Union Workers' Initiative (OZZ IP), former Secretary of the National Commission and the National Commission member (Katarzyna Rakowska)	4/13.10.2015
18.	[I18]	National level (trade unions)	Michał Lewandowski	All-Poland Workers' Trade Union Confederation of Labour (OPZZ KP), Chairman, (an affiliate to OPZZ, the All-Poland Alliance of Trade Unions)	26.10.2015
19.	[I19]	National level (trade unions)	Jarosław Urbański	All-Poland Trade Union Workers' Initiative (OZZ IP), former Secretary of National Commission	20.06.2015
20.	[I20]	National level (industrial relations expert)	Jan Czarzasty	Expert, Warsaw School of Economics, Institute of Philosophy, Sociology and Economic Sociology	21.12.2015
21.	[I21]	Retail	Iwona Mandat	All-Poland Workers' Trade Union Confederation of Labour (OPZZ KP), the President of the Company Commission in Tesco	18.02.2016

<sup>1</sup> Since November 2015, the new government has changed the name of the Ministry of Labour and Social Policy (Ministerstwo Pracy i Polityki Społecznej, MPiPS) into Ministry of Family, Labour and Social Policy. For the sake of consistency and given that our data concern mostly an earlier period, we use in the report an older name of the Ministry and abbreviation MPiPS.

## PART I: PRECARIOUS WORK IN THE CONTEXT

### 2. Precarious work in Poland: legal developments and socio-economic context

The re-segmentation of labour market in Poland after 1989 has its roots in the economic crisis of the late 1980s. and the shock therapy of the early 1990s. which led to the large-scale liquidation and privatization of the state owned enterprises and in the result to mass unemployment. The birth of the reserve army of labour coupled with fiscal regime imposed on wages to squash their growth created very unstable environment on the labour market (Kowalik 2009). In the next years this was followed by the steep drop in the union density, from ca. 38 per cent in 1987 to 12 per cent in 2014 (Wenzel, 2009:540; Feliksiak, 2014). This further contributed to the destabilisation of working conditions in Poland, in particular given the limited union interest in the protection of those in temporary jobs in the first two decades of transformation (Trappmann 2011a).

Although there was no strategic governmental document concerning the long-term planning of labour market policies until 1997, the efforts to flexibilise employment gathered speed during Polish preparation to join the European Union. Labour market flexibility was a central idea behind the changes in the Labour Code in the early 2000s, as well as in the anti-crisis legislation passed in 2009 and 2013. Since 1999, as a result of economic slowdown, industrial restructuring, the second wave of privatisation and public sector reforms, the unemployment rate rapidly began to increase reaching the level of 20 per cent in 2002/2003. Consequently, there was a need to create a coherent political strategy toward the resulting structural problems. Thus, in order to adjust the Polish legal framework to the EU regulations and to fight the unemployment, the government introduced new labour market policies which, as pointed by Kozek (2013) and Giermanowska (2013), largely imitated the EU documents, such as European Employment Strategy.

Firstly, there were changes in the Labour Code and the surrounding acts, mainly such as 1) the regulation of temporary work agencies in the legislation of 2003 (*the Act on the Employment of Temporary Workers*) and 2004 (*the Act on the Employment Promotion and Labour Market Institutions*); (2) the introduction (for the period of 2003-2004) of the possibility of concluding unlimited number of fixed term contracts (previously – up to 3 fixed term contracts for the period of up to 3 months each); the latter regulation was revoked again in 2004 and (as of summer 2015), a third consecutive fixed-term contract automatically becomes an indefinite-term contract; (3) the exemption of SMEs from the obligatory contributions to company social fund; (4) the introduction of possibility to suspend for up to three years collective agreements for employers in difficult economic situation. Simultaneously, in 2002, a new paragraph precluding the replacement of employment contracts with civil law contracts was added to the Labour Code (Art. 22 § 1(2)). While some of these changes improved the situation of those in flexible forms of employment, for instance by creating a framework to regulate temporary agency work or reducing the maximum number of fixed-term contracts (in 2004), others weakened workers' protection.

Secondly, the new Act on the Employment Promotion and Labour Market Institutions was implemented in 2004, which most importantly decentralized the management of the unemployed by partially offloading it to private institutions (like work agencies and training institutions). At the same time the law intensified the control over the unemployed by reducing the period of allowances' provision and the scope of the groups entitled to them.

Although the unemployment rate dropped (to 14,8 per cent in 2006 and 11,2 per cent in 2007), we cannot clearly conclude whether the policies were efficient in increasing the employability, especially because in the same period there was a mass migration to Western European countries (in 2007 2,27 million Poles were living and working abroad as compared to 786 thousands in 2002). However it can be suggested that the changes had to have some influence on employment flexibility as at that time the number of contracts of limited duration grew rapidly from 4,6 per cent in 1999 to 28,2 per cent in 2007 (Eurostat). Simultaneously, the share of the self-employed without workers (excluding agriculture) was relatively stable and amounted to 6,4 per cent of the employed in 2000 and 6 per cent in 2008. Unfortunately, no reliable data exists with regard to the scope of civil law employment at that time.

The next wave of important changes in labour market regulations came with the 2007+ global financial crisis. Although the crisis had lesser impact on macroeconomic indicators of the Polish economy than in other EU countries (Maciejewska, Mrozowski, Piasna 2016), we could observe the preventative actions undertaken by the government together with other social partners. However, new regulations, which supposed to be an outcome of social dialogue, happened to be top down policies. Out of compromised proposals made by trade unions and employer associations which aimed at limiting the expected scope of job loss and financial losses of the companies operating in Poland, the government introduced mostly those which would keep the economic growth stable and increase labour flexibility without enforcing labour protection (Czarzasty and Owczarek 2012). In 2009, the Act on Alleviation of the Effects of Economic Crisis on Employees and Employers (the “Anti-crisis Act”) was implemented allowing employers to conclude the unlimited number of fixed term contracts in the period of 24 months, and to extend the reference period for calculating working time from 4 to 12 months (in consultation with trade unions in unionised enterprises). It also brought the option of the flexible working hours (24-hour work cycle), and public subsidies for enterprises suffering from temporary economic difficulties.

The crisis-related measures had relatively little effects on the Polish economy at large. The number of request for financial aid to subsidize employment was limited to less than 12,000 cases (in 2009-2011). Only 1075 employers, mainly large companies, used the possibility to extend working time settlement periods (Czarzasty and Owczarek 2012: 105-106). Despite the measures promoting temporary contracts, the share of temporary employees in the total employment grew only slightly in the age category of 15-64, from 26,4 per cent in 2009 to 26,8 per cent in 2011 and 28,3 per cent in 2014. However, it rose significantly among the youngest (15-24 years old) employees, from 62,8 per cent in 2008 to 65,6 per cent in 2011 and 71,2 per cent in 2014. Although any causal relationship is difficult to prove, it can also be argued that the reintroduction of the Labour Code limits of the number of consecutive fixed term contracts in 2011 might have stimulated employers’ interests in non-labour employment, including civil law contracts. The estimated number of people with whom a civil law contract was concluded and who were not employed based on employment contract elsewhere grew from 546 700 in 2010 to 1 400 000 in 2013 and 1 300 000 in 2014 (GUS 2015a, 2015b). Simultaneously, the share of the self-employed without workers in the total number of the persons employed (excluding agriculture) grew from 6,3 per cent in 2009 to 6,8 per cent in 2014.

It can be claimed that anti-crisis legislation has opened the doors to further deregulation and flexibilization of the labour market. Although the “Anti-crisis Act” was revoked in 2011, the direction undertaken by the Polish government (ruled by the coalition of Civic Platform and the Polish People’s Party since 2007) in 2009, was reproduced by the next political decisions. Despite mass social protests, in 2012 the government prolonged retirement

age (up to 67 for both men and women<sup>2</sup>) and in 2013 permanently inscribed into the Labour Code the possibility to extend the reference period for calculating working time to 12 months (if there are objective, technical or organisational reasons given by the employers). The reforms also led to the introduction of flexitime into working hours and work schedule (at present the employers can vary the time by which the 8-hours-working-day should start and finish in the 12 hours working cycle).

At present moment (2015), the further changes of labour market regulations are expected. First one is actually already evolving and concerns labour market policies which are heading toward the model of New Public Management (Sztandar-Sztanderska, 2013), however the results are yet unclear<sup>3</sup>. Secondly, as an outcome of the pressure imposed by the European Commission and trade unions, as well as in the context of forthcoming parliamentary elections, in 2014 the PO-PSL government presented a long term strategy – so called “2014 Labour Pact” which has some influence on the use of temporary, flexible employment. In June 2015, it was translated into the amendments to the Labour Code (coming into force on 22<sup>nd</sup> February 2016). They limited the number of consecutive temporary employment contracts with the same employer to three and their maximum length to 36 months (including three months of probation period). Earlier, in 2014, legal changes were passed which introduced obligatory social security contributions (to be paid by employers) from all freelance contracts up to the level of minimum wage starting from January 2016. Finally, and most recently, on the 2<sup>nd</sup> June 2015, following the motion set by the All-Poland Alliance of Trade Unions (OPZZ), the Constitutional Tribunal of Poland deemed the limitation of union membership to employees unconstitutional. This potentially opens the way to a range of legislative changes not only in the Trade Union Act, but also in other legislation that currently excludes from workers’ rights those in the non-employment types of contracts (self-employed and civil law contracts in particular). Following the parliamentary elections in October 2015 won by the Law and Justice (PiS), the plans for the further legal changes were announced, among others the introduction of the minimum hourly wage (12 PLN) for freelance contracts and solo self-employed. In the next section we will look more into details of both the past and present changes considering most important developments of labour market deregulation which lead to the precarisation of employment in a close-up of 4 main types of atypical employment.

### 3. Forms and incidence of precarious employment in the economy

In order to understand various forms of precarious employment, a standard employment relationship has to be defined. In accordance with the Article 2 of the Polish Labour Code (LC), an employee is a person employed on the basis of an employment contract, appointment, election, nomination or co-operative contract of employment. Article 22, §1 of the LC defines employment relationship in which an employee is committed to perform a specific job for an employer, under the supervision of employer and in the place and time set by the employer, and the employer is committed to employ an employee for remuneration. Employees have to be paid at least minimum wages set by the state (Article 10, §2), they are protected by anti-discriminatory regulations, they enjoy the right to holidays and rest, they can organise to protect their rights and interests (Article 18), their employer is

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<sup>2</sup> Previously it was 60 for women, and 65 for men.

<sup>3</sup> The changes implemented into the Act on the Employment Promotion and Labour Market Institutions (enacted in 2014) on the one hand, aim at rationalising the expenditures on active labour market instruments by introducing the 'profiling' of the unemployed which were previously unknown in Poland, and on the other hand, establish strict measures of efficiency and competitiveness (so called 'targets') for labour market institutions (both public and private) by bounding the financing of such institutions with their efficiency (according to the centrally established indicators).

obliged to facilitate their training, their basic working time is determined by the Labour Code<sup>4</sup> and their dismissal periods are set by the Labour Code, too<sup>5</sup>. Thus, a typical employment can be defined as full time employment based on open-ended employment contract.

**Table 2. Quality of working conditions dimensions**

Type of contract	Wages	Working time	Employment security/protection against dismissals)	Contributions to (a) social security, (b) health security	Voice	Contracts classification
<b>Open-ended employment contract</b>	Minimum wage applies	Regulated by the Labour Code	Yes	Obligatory	Full trade union membership rights	(1) Standard labour employment
<b>Temporary employment contracts</b>	Minimum wage applies	Regulated by the Labour Code	Limited (until 02.2016, short notice periods, afterwards – similar to open-ended contracts)	Obligatory	Full trade union membership rights (restrictions in practice)	(2) Non-standard labour employment
<b>Part time employment contracts</b>	<i>Pro rata</i> minimum wage applies	Regulated by the Labour Code ( <i>pro rata</i> )	Yes	Obligatory ( <i>pro rata</i> )	Full trade union membership rights (restrictions in practice)	
<b>Temporary agency work</b>	Depending on the type of contract	Depending on the type of contract	Limited (short notice periods)	Depending on the type of contract	Union membership rights granted in case of employment contracts but difficult to execute	(1) and (2) Labour or non-labour employment
<b>Freelance contract</b> ( <i>umowa zlecenie</i> )	No minimum wage	Not regulated by the Labour Code	No	Obligatory (with exceptions)	No/Yes (since June 2015) <sup>1</sup>	(3) Non labour employment and self-employment
<b>Specific-task contract</b> ( <i>umowa o dzieło</i> )	No minimum wage	Not regulated by the Labour Code	No	No	No/Yes (since June 2015) <sup>1</sup>	
<b>Self-employment</b>	No minimum wage	Not regulated by the Labour Code	No statutory guarantees	Obligatory	No/Yes (since June 2015) <sup>1</sup>	

Source: Authors' desk research.

Note: 1) In June 2015, following the motion issued by the All-Poland Alliance of Trade Unions, the Constitutional Tribunal ruled that all working people, including the self-employed and those with civil-law contract, should have the right to establish and join a trade union. The ruling is *de facto* effective, but concrete legal changes, among others in the Trade Union Act are still to be followed

<sup>4</sup> As a part of standard regulation, working time cannot exceed eight hours per day and on average 40 hours during on average 5 days long week within the period of calculating working time which is no longer than four months.

<sup>5</sup> In the case of open-ended contracts, these are two weeks in case of employees who were employed for a shorter period of time than six months, one month in the case of employment longer than six months and shorter than three years and three months in the case of employment longer than three years..

Table 2 points to five main dimensions of working conditions of the most relevant atypical contracts. Regarding the most recent Polish studies on atypical and flexible employment, there are at least two ways of how to categorize these types of work which both refer to the diminishing role of Fordist, standard, open-ended full time employment in one workplace most commonly protected by trade unions in collective agreements. The first one, derived from Giermanowska (2013), distinguishes between typical and atypical forms of employment, dividing the latter into labour employment, based on employment relationship like fixed-term and part-time contracts; and non-labour employment based on different than the Labour Code regulations, like: civil law employment; and lastly other types of employment for which there are no consistent legal classifications, like self-employment or temporary agency work. Taking a slightly different approach, Wratny (2008) proposes to classify the different types of employment based on social and job securities they provide. He differentiates among four types of atypical employment: fixed-term, part-time, temporary agency work and telework. He also addresses civil-law employment; the latter is synonymous with a situation in which employer enters into a legal relationship with a natural person which is regulated by the Civil Code. Civil law employment includes freelance contract (*umowa zlecenie*), specific task contract (*umowa o dzieło*) and other, not named contracts<sup>6</sup>. In addition, according to Wratny (2008: 31), self-employment can also be considered as a type of civil law employment, even though it is sometimes a “hidden form” of labour employment

In this report we propose to combine the proposals of Giermanowska and Wratny and distinguish three basic types of contracts: (1) standard, full-time, open-ended, labour employment contracts which guarantee full workers’ rights in accordance with the Labour Code (coloured green in table 1); (2) non-standard labour employment contracts, including part time employment and temporary employment contracts (sometimes also labelled as fixed-term employment contracts or the contracts of limited duration), both regulated by the Labour Code (coloured orange in table 1); (3) non-labour employment contracts (civil law contracts) and self-employment which are regulated by the Civil Code and other legal acts, excluding the Labour Code (coloured purple in table 2). As a specific category “in between”, we point to the temporary agency work which is based either on labour employment (as its main form stipulated in the Act on employment of temporary workers) or on non-labour, civil law employment.

**Table 3. Basic employment and non-standard employment statistics**

	2008	2009	2010	2011	2012	2013	2014	2008-2014 change
Employed persons (total, thousand, 15-64) <sup>1</sup>	15 799,8	15 868,0	15 473,1	15 562,1	15 590,7	15 568,0	15 861,5	+ 0,4%
Employment rate (15-64) <sup>2</sup>	59,2%	59,3%	58,9%	59,3%	59,7%	60,0%	61,7%	+ 2,5%
Unemployment rate (15-74) <sup>3</sup>	7,1%	8,1%	9,7%	9,7%	10,1%	10,3%	9%	+ 1,9%
Temporary employees (% of the total no. of employees) <sup>4a</sup>	26,9%	26,4%	27,2%	26,8%	26,8%	26,8%	28,3%	+ 1,4%
Part time employees <sup>5</sup>	7,7%	7,7%	7,7%	7,3%	7,2%	7,1%	7,1%	- 0,6%

<sup>6</sup> One of our informants suggested that in practice not named contracts dominate but they are sometimes named as a freelance contacts.

	2008	2009	2010	2011	2012	2013	2014	2008-2014 change
Employment through temporary work agencies (as the % of the employed) <sup>6</sup>	3%	2,4%	2,8%	3,2%	3,3%	3,6%	4,4%	+1,4%
Civil law contracts as the % of the employed (GUS) <sup>7b</sup>	<i>No data</i>	<i>No data</i>	3,5%	6,5%	8,7%	9%	8,2%	+4,7%
Self-employed without workers (except for agriculture) <sup>9</sup>	14,3% (6,0%)	14,2% (6,3%)	14,5% (6,7%)	14,5% (6,8%)	14,3% (6,7%)	14,0% (6,7%)	13,8% (6,8%)	- 0,5% (+0,8%)

Sources: 1,2,3,4,5,9 Eurostat; 6) Ministry of Labour and Social Policy and the Polish HR Forum (for 2014) - own calculations of %; 7) GUS - the Central Statistical Office (own calculations of %),

Notes: All statistics except for the number of civil law contracts and unemployment rate are presented for the age group 15-64. The number of civil law contracts and their share in the total employment are presented for the age 15+. The unemployment rate is presented for the age 15-74. Specific notes: a) according to Eurostat definition, a job may be considered temporary if employer and employee agree that its end is determined by objective conditions such as a specific date, the completion of a task or the return of another employee who has been temporarily replaced (usually stated in a work contract of limited duration); b) the estimated number of people with whom a civil law contract was concluded and who were not employed based on employment contract elsewhere

Table 3 presents basic information about developments in the forms and incidence of precarious employment in Poland in recent years. The interpretation of the trends will be given in the next part of the report. At this point, a methodological note is needed. The statistics of atypical employment in Poland vary among the existing sources. This concerns in particular the scope of civil law contracts, but it also refers to other data, such as for instance self-employment. In addition, the precarious status of employed in particular types of contracts is usually determined by the interaction of various factors (such as pay, voluntary/involuntary nature of work with a given contract, workplace power relations between employers and employees/trade unions) of which contractual basis of work is just one element. Taking into account both factors, the statistics presented in the table should be examined with a necessary caution.

Bearing in mind project's analytical framework, we will focus in the next sections in particular on the most common forms of precarious employment in Poland grouped into (1) non-standard labour employment contracts (temporary employment contracts and part-time employment contracts) and (2) non-labour employment contracts (civil law contracts) and self-employment. We add to our discussion temporary agency work and the low-paid employment as specific types of precarisation which cut across various contractual arrangements. In case of each form of employment precarisation, we start by presenting its legal regulations (and their recent changes) and continue by discussing available data concerning its scope on the labour market and its selected characteristics.

### 3.1. Non-standard labour employment contracts

Non-standard labour employment contracts are those which are recognised and regulated by the Labour Code as a form of employment relationship. As compared with open-ended labour employment contracts, they are connected with greater employment flexibility



as well as the limitation of some workers' rights and employers' obligations related to their temporary or part-time nature. Two main types of non-standard labour employment contracts are temporary employment contracts and part-time employment.

### *3.1.1. Temporary employment contracts*

At present, fixed-term/temporary employment contracts are the prevailing form of flexible employment in Poland. Originally, fixed-term contracts were designed for the specific tasks or for the tasks of limited duration. However, fixed-term contracts became a common practice of flexible employment replacing on a large scale standard, open-ended contracts. Until 2015, the Labour Code recognized four types of temporary contracts: 1) a contract for a probationary period (lasting up to 3 months); 2) a replacement employment contract (used during the absence of standard employee); 3) an employment contract to complete a specific assignment (for seasonal, temporary work); and most common: 4) an employment contract of limited duration. However, following the amendments to the Labour Code announced in the Journal of Laws in August 2015 and enforced on 22 February 2016 (see below), the replacement contracts and contracts to complete a specific assignment were removed from the Labour Code. Observing a spectacular expansion of the contracts of limited duration, this section will focus specifically on this type. However, it should be remembered that other types of temporary contracts might have also been linked to precarisation, e.g. the replacement contract has very short notice periods (three days only).

The contracts of limited duration are characterised by rather high social security which is basically the same as in the case of standard, open-ended employment contracts. It covers contributions to the pension and health care system and the right to minimum wage. Simultaneously, until recently, they have provided relatively low job security and access to union representation which both resulted from the low level of protection against dismissals. Until the changes in the Labour Code passed in summer 2015 (and coming into force in February 2016), it was only 2 weeks in the case of contracts lasting more than 6 months providing the period of notice was included in the contract. The only limitation of the use of the contracts of limited duration was the amount of the contracts concluded with one employer. The third contract had to automatically be an open-ended contract if there was less than one month break during the employment periods. However there was a common practice of abusing of such type of contracts in terms of their duration. As there were no serious consequences, the employers, in order to postpone the conclusion of an open-ended contract, might have prolonged a contract to five or more years even though this was considered bypassing the Labour Code<sup>7</sup>.

Most important changes in the regulation of contracts of limited duration took place in 2009 with the "Anti-crisis act" (*the Act on alleviation of economic crisis effects on employees and employers*) which allowed to conclude the unlimited number of contracts for the period of 24 months. The act was revoked in 2011. In 2012, NSZZ Solidarność (Independent Self-Governing Trade Union Solidarność) made complaint to the European Commission concerning the improper application of Council Directive 99/70/EC in Poland with respect to the abuse arising from successive fixed-term employment contracts. The complaint was acknowledged by the EC in December 2013 and specific recommendations followed (Surdykowska 2013). In March 2014, the European Court of Justice (ECJ) ruled that the Polish Labour Code provision - regarding notice periods applicable to fixed-term employment contracts - infringes the prohibition against treating fixed-term employees less favourably

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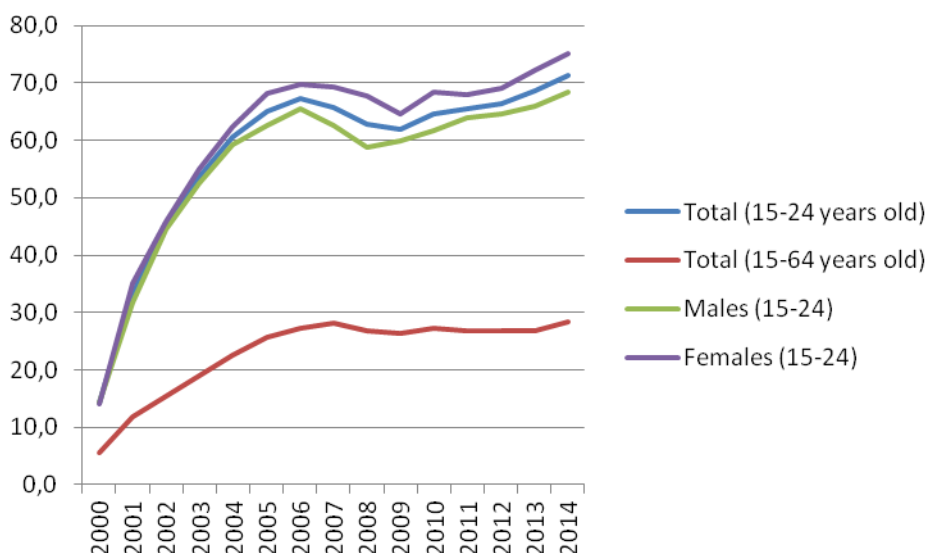
<sup>7</sup> See for instance the decision of Supreme Court of Poland of 19.05.2011 (I PK 154/10) in which the Court stated that concluding a contract for five years with the notice period of two weeks is contradictory to the socio-economic purpose of such a type of contract (cf. Ofierski 2014)



than permanent employees if the situations of those employees are comparable, i.e. it violates Clause 4(1) of the Framework Agreement on Fixed-Term Work (March 18 1999), which is annexed to EU Directive 1999/70/EC (Miętek, Pałubicki 2014).

Acting under pressure of trade unions, the ECJ and the recommendations of European Commission, the government accepted a complex draft amendment to the Labour Code in March 2015 which brought major changes in the use of fixed-term contracts (Czarzasty 2015a). The amendment was successfully passed by the Parliament in June 2015, signed by the president in August 2015 and it will come into force in February 2016. The amendment is a part of earlier mentioned “2014 Labour Pact” designed to regulate flexible employment and adjust it to the EU Directives. It limits both the duration and the scope of such contracts: it allows to conclude three contracts of limited duration in the total period of 36 months (including the 3 months probationary period) and expands the protection against dismissals (2 weeks, one month or 3 months if the contract lasts respectively: up to 6 months, more than 6 months and less than 3 years, at least 3 years). In practice, it liquidates some of the crucial differences in notice periods between open-ended and fixed-term contracts. The amended Labour Code enables to conclude contracts longer than 36 months in case of some special situations, such as worker’s replacement or “objective reasons” related to the specificity of job performed. In the latter case, an employer has to inform the Labour Inspectorate about the reasons for concluding such a contract. The new law excludes an earlier existing (and often abused) possibility to increase the number of temporary contracts in case of a one month break between them. As already noted, it also limits labour employment contracts to three main types: open-ended employment contracts, fixed-term employment contracts and the employment contracts for a probationary period. It needs to be noted that the Labour Code amendment presents a compromise between trade union postulates which proposed a maximum period for concluding the contracts of limited duration to be 18 months and employer organisations proposal which argued for 48 months.

**Figure 1. The share of temporary employees in the total number of employees**

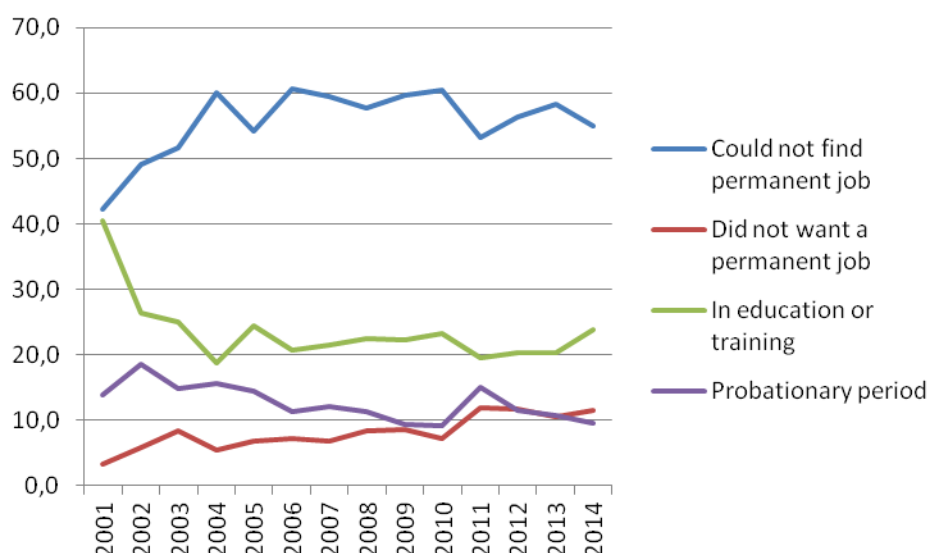


Source: Eurostat, own calculations

Between 2000 and 2014, the share of temporary employees in the total number of employees aged 15-64 grew from 5,6 per cent to 28,3 per cent; the sharpest increase having

been observed until 2006 (figure 1)<sup>8</sup>. In the case of young workers (15-24), the numbers are much higher, from 14,2 per cent to 71,2 per cent (68,4 per cent for men, 75,1 per cent for women). Temporary employment growth in 2008-2014 was observed in the most of economic sectors except for manufacturing, construction and financial, insurance and real estate activities. In absolute numbers, the biggest increase in the number of temporary workers was observed in the wholesale and retail (by 74 200 workers between 2008-2014) (Mrozowski, Maciejewska, Piasna 2016).

**Figure 2. Main reason for temporary employment (age 15-24)**



Source: Eurostat, own calculations

In most cases temporary employment in Poland tends to be involuntary (figure 2). Being in the education and/or training (even in the case of young workers) is relatively unimportant reason for taking temporary job. However, the share of those who “did not want a permanent job” is growing, which can indicate a process of “normalisation” of temporary employment discussed in qualitative research (Desperak, Śmiałek, 2010; Poławski 2012).

Kiersztyn (2012) suggests that regardless of occupation, temporary employees earn less than permanent workers – by around 30 per cent on average. Moreover, the transition to permanent employment is difficult (Kiersztyn 2012; Strzelecki et al. 2013). For instance, the Social Diagnosis survey (Strzelecki et al. 2013: 126) suggests that only 36 per cent of interviewees employed with fixed term contracts in 2011 managed to get permanent contract in 2013. The analysis of Kiersztyn (2012) shows that workers with the contracts of limited duration experience significantly more often the risk of poverty and economic deprivation (50,8 per cent households of temporary workers as compared to 23,8 per cent households of permanent workers) and financial exclusion (16 per cent as compared to 5,9 per cent permanent workers). Even though workers with such contracts are granted full union membership rights, they often fear of joining trade unions. The last data available on the topic

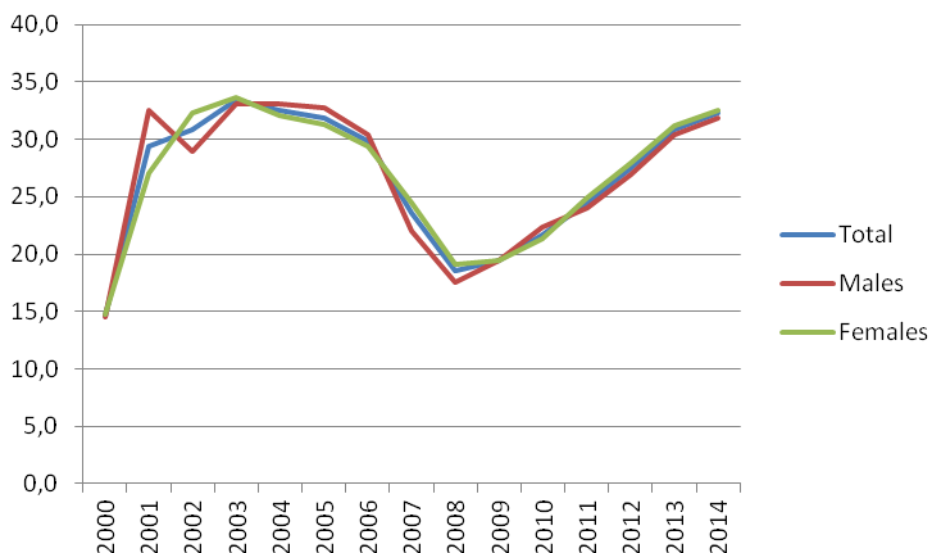
<sup>8</sup> It requires further analysis whether and to which extent the Eurostat category of “employees with a contract of limited duration” and the estimates of the Central Statistical Office of the Republic of Poland (GUS) concerning the number of workers with civil law contracts are partially overlapping. On the one hand, workers with civil law contracts do not have an employment contract and consequently are not covered by the Labour Code. On the other hand, the Eurostat definition of temporary job seems to cover the situation of workers with civil law contracts (see table 2, notes).

suggests that in 2007, 18.4 per cent of full-time workers were union members, compared with 3.4 per cent of part-timers and 10 per cent of those with temporary employment contracts (Gardawski 2009: 551).

### 3.1.2. Part-time contracts

Part-time work in Poland is the employment in the amount of daily working hours lower than 8 hours or on average 40 hours per week. The duties and rights of part-time employers are regulated by the Labour Code in accordance with the *pro rata temporis* rule, i.e. proportionally to their working time (Wratny 2008), including the rules of minimum remuneration and annual leave. They enjoy the right to establish and join trade unions and the Labour Code includes the principle of their non-discrimination against full-time employees with respect to wages, working conditions, access to training, career and skill development and other factors. Individual contract of part-time employee should also include the specification of weekly working time organisation and overtime arrangements. The Labour Code also includes the principle of the freedom of transitions between part-time and full-time employment as far as it is possible for an employer and demanded by an employee. However, this rule proves to be difficult to enforce (*ibidem*). From the perspective of employers, the advantages of part-time work include greater flexibility for employers in determining the level and the structure of employment. In the case of employees, voluntary part-time jobs might be helpful in achieving better work-life balance. Notably, no significant changes were observed in the legal regulations of part time work in the recent years.

**Figure 3. Involuntary part-time employment as percentage of the total part-time employment (15-64)**



Source: Eurostat, own calculations.

According to the Eurostat, contrary to the EU trends, the share of part-time employees in Poland declines – from 9.3 per cent in 2000 to 7.3 per cent in the second quarter of 2014 (the EU – 15.8 per cent in 2000 and 19.7 per cent in 2014). The reason for the difference in the relevance of part time employment in the EU countries and Poland is related to on average low wages which make it difficult for part-time employees to support themselves (Oczki 2012: 218). This is confirmed by the fact that the in-work at risk of poverty rate was 9.7 per

cent of the employed full time workers as compared to 20,2 per cent of part-timers in 2013<sup>9</sup>.

In the recent years a visible growth in the involuntary part-time was observed, from 19,1 per cent of the total number of part-time workers in 2008 to 32,5 per cent in 2014 (the figures for male and female employees are roughly the same, cf. figure 3). The typical reasons for voluntary part-time jobs, such as being in education or training (9,1 per cent) or having family responsibilities (3,7 per cent) are of limited importance in Poland and the most popular are “other reasons” (43,5 per cent) which are difficult to interpret, but might indicate another form of involuntary part-time<sup>10</sup>.

### 3.2. Temporary agency work

The temporary agency work (TAW) was formally introduced in 2003 with the implementation of the “Act on employment of temporary workers”, albeit its history reaches the previous decade when it functioned as a type of work assigned by the private employment agencies often in a form of civil law contract (described in the next section) (Urbański, 2014: 94). The core mechanism of such employment is similar as in the other European countries: an agency (as a direct employer) leases the workers to a company, called in Poland as “the employer-user”, and all costs of employment are covered by the agency. In accordance with the existing regulations, temporary work agencies are basically allowed to employ workers with two types of non-standard labour employment contracts: the contracts of limited duration and employment contracts to complete a specific assignment (Article 7 of the Act on employment of temporary workers). As long as it is abided, this regulation grants temporary workers access to social security system (contributions to pension and health care system) and the right to minimum wage. Simultaneously, the Article 23(2) of the Act opens the possibility of employing temporary agency workers with civil law contracts which in practice deprives the rights related to standard employment, including minimum wage, dismissal periods and others. Therefore, temporary agency work needs to be placed “in between” the categories of contracts discussed in this report.

Even in the case of temporary agency workers with labour employment contracts, their job security in terms of protection against dismissals is limited as compared to those with temporary employment contracts who do not perform their work through the agencies. The employer-user can terminate the contract with only three days notice if the contract lasts less than two weeks, and seven days if the contract last longer. Temporary agency workers do not enjoy the rights to benefits in the case of redundancies and their protection against dismissals in the case of pregnancy is limited to the employment period only. The agency can conclude unlimited number of temporary contracts with one worker leasing him/her to the particular employer-user, the only limitation is that the overall employment cannot exceed 18 months in a period of 36 months. However, this restriction can also be omitted, as the agencies can transfer their labour force between one another, as well as to subcontracting companies which are not registered as temporary work agencies and therefore do not abide to the 2003 Act.

Temporary agency workers in Poland are mostly not unionised because the right to organise in the employer-user company is not legally recognized (the workers can join trade unions only as agency employees) or the type of their contract (civil law contract) does not allow for their unionisation. There are, however, possibilities and efforts to represent such workers by the unions, either by establishing inter-company committees (between the

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<sup>9</sup> In work at risk of poverty rate is defined as the share of persons who are at work and have an equivalised disposable income below the risk-of-poverty threshold, which is set at 60 per cent of the national median equivalised disposable income (after social transfers).

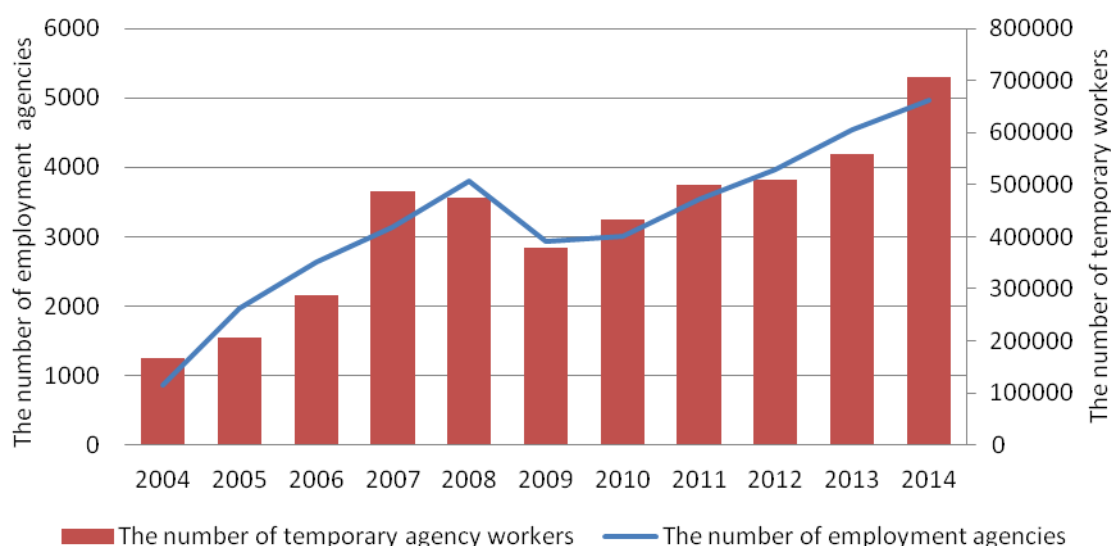
<sup>10</sup> For instance, being asked by an employer to accept part-time jobs and obtaining a part of salary without contract, which was reported in our qualitative interviews in the construction sector.

company and temporary work agencies) or by covering them by company-level collective agreements.

Except for some decline in 2008-2009, when employers started to reduce the number of their temporary staff as a result of the crisis, the growth trend in the number of temporary agency workers continued in all years since 2003, from 167 644 in 2004 to 559 465 in 2013 and over 700 000 in 2014 (Polskie Forum HR, 2015a) (figure 4). The dominant sectors in which temporary agency workers are employed include automotive industry, machine, electronic and food industry and other manufacturing branches, while the number of temporary agency workers in services remains relatively low (OKAP 2014; Polskie Forum HR 2015a)

As documented by the reports by the Ministry of Labour and Social Policy (*Agencje...*, 2013: 19), the majority (57 per cent) of the temporary agency workers worked on the basis of civil law contracts. According to the Polish Forum HR, one of the key employer organisations in the sector, the practice of misuse of the civil law contracts is particularly relevant in the case of smaller agencies, while 92 per cent of the PFHR affiliates tend to employ workers with employment contracts (*Polskie Forum HR*, 2015b).

**Figure 4. The number of temporary work (employment) agencies and temporary agency workers**



Source: Own calculations, based on OKAP (2014) and Polskie Forum HR 2015a

### 3.3. Non-labour employment contracts and self-employment

Non labour employment contracts are those in which the “ordering party”/“contracting entity” (or other equivalent of “an employer” in the case of labour employment) concludes a contract with a service provider (“an employee” in the case of labour employment) which is regulated by the Civil Code. It can basically take the form of a freelance contract (*umowa zlecenia*), specific task contract (*umowa o dzieło*) or an “unnamed contract” (*umowa nienazwana*)<sup>11</sup>. As compared with standard and non-standard labour employment, workers who perform their work based on civil-law contracts share two basic characteristics: they should not perform their work under supervision of an employer and they are deprived of

<sup>11</sup> An alternative label used by Central Statistical Office for freelance contract (*umowa zlecenia*) is a “mandate contract” and for specific task contracts - a “contract of specified work”.

workers' rights guaranteed by the Labour Code (Wratny 2008: 30). As argued by Wrątny (ibidem: 31), self-employment can be considered "a type of civil-law employment, and thus performing work for other entity, albeit on own account, or a type of labour employment (zatrudnienie pracownicze) under the "mask" of self-employment" (Wratny 2008: 31).

### 3.3.1. Civil law contracts

Civil law contracts point to very important developments of precarisation of employment in Poland as their history starts in the early 1990s, when Poland underwent the systemic transition. Thus it was one of the key elements in the process of forcing the employment relationship out of the Labour Code what largely contributed to the labour market dualization and deregulation. Even though no systematic data is available, the NSZZ Solidarność expert interviewed for the sake of the PRECARIR project (I14) suggested that civil-law employment was very popular in the 1990s in Poland until the reform of the Labour Code in 1997, back then social security contributions did not need to be paid from any kind of civil-law contracts. The reforms enacted in 1997-98 made the contributions from freelance contracts / contracts of mandate obligatory.

As classified by Wrątny (2008) under the term "civil law employment", there are two major types of such contracts: freelance contracts and specific-task contracts. Yet another type of civil law contract is the agency contract in which the "agent" is committed to act as intermediary in concluding contracts between the principal and clients in return for provisions. The number of "agents" in Poland is relatively small and stable in the recent years and amounts to 50,9 thousand (in 2013, RS GUS 2014). A type of civil law contract to which a part of the Labour Code regulations apply is also an outwork contract (*umowa o pracę nakładczą*)<sup>12</sup>. Its scope is very limited (1,1 thousand outworkers in 2013).

While agency contracts and outwork contracts were more popular before 1989, at the present moment the most important forms of non-employment "work" contracts are freelance contracts and specific-task contracts. Their common feature is that they are all regulated only by the Civil Code, and formally are defined as "non-employment relationship" (PIP 2013) what means that the "contractor" provides services for the person/company ordering it, but does not perform work. In the light of Labour Code "employment relationship" defines work, as the activity performed in the place and time pointed by the employer and under his/hers supervision. Thus civil law contracts can be concluded only when none of the above mentioned circumstances occurs. However, according to the National Labour Inspectorate (PIP), the employers are keen on employing workers under the civil law contracts because it significantly lowers their labour costs, and the risk of legal consequences, as well as the possibilities to enforce the penalties, are also quite limited (PIP 2013). When it comes to union representation, as pointed by Wrątny (2008: 32), although the civil law employment is not covered by the existing trade union law, the rights of such workers can be represented by the unions through the collective bargaining agreements (article 239 §2 of the Labour Code). They are also covered by non-discrimination regulations of the EU implemented in Poland in 2010. Following the motion filed by the All Poland Alliance of Trade Unions (OPZZ) regarding the right to coalition, in June 2015 the Constitutional Tribunal of Poland ruled that "the Trade Unions Act violated the Constitution by narrowing the right to start and join unions only to people with an employment contract" (Czarzasty 2015b). As a result, workers with civil law contract and self-employed can claim their right to join and establish trade unions as well, even though concrete legislative changes are still to be proposed and enacted.

Both freelance and specific-task contracts deprive workers of all their employee rights

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<sup>12</sup> Outwork contracts are usually related to specific tasks assigned by an employer to an employee to be performed at home, or in the time and place chosen by an employee.



provided by the Labour Code, like the right to paid annual leave, the right to minimum wage, to unionize and to the 8 hours working day. Freelance contract and similar unnamed civil law contracts are the one of the most often used forms of flexible employment in Poland. In contrast to specific-task contract, it can cover some elements of social security system. The employer, a person/company ordering services, is obliged to pay contributions to social security, pension, health insurance systems, the accident insurance is paid if a person performs services in the seat of the company, and the sick insurance is voluntary. Basically, the contributions are obligatory if the freelance contract is the only source of income, but a range of other provisions apply. For instance, in the case of pupils and students under 26 years old, the contributions are not obligatory. In the case of the employment in other company with an employment contract and obtaining at least minimum wage, it is required to pay contributions from the freelance to health insurance system only. In case of couple of freelance contracts (as the only source of income), the general principle is that contributions are paid from the earliest contract. Yet, in the course of the multiple contracts' duration the contractor can decide from which one contributions would be obligatory.

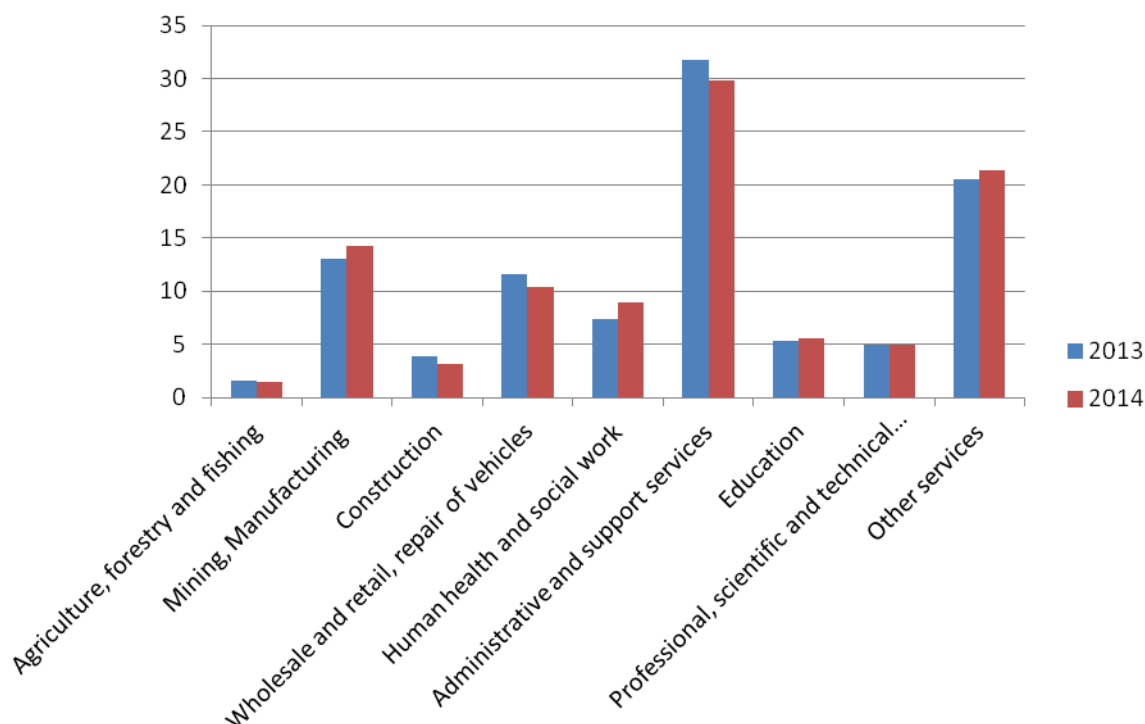
Since the minimum wage regulation does not apply within this type of contract, the real costs of contributions are in practice offloaded onto the employees' wages shrinking their net value. This resulted in a common practice: in order to enlarge the net wages, freelance workers could ask for two contracts: the one from which contributions were paid (stating the lowest possible pay) and another one from which they were not. This loophole was enabled by the Polish law which regulated that no matter how many freelance contracts one had, the contributions would be paid only from one of them, and respectively to the amount of money contracted. The situation, once having large influence on the public budget, was recognised by the PO-PSL government. In 2014, as a part of the earlier mentioned "Labour Pact", the parliament introduced changes in the Act on Social Security System. Since the beginning of 2016 the contributions to pension and social security insurance system (the Social Insurance Institution, ZUS) will have to be covered by employers from all freelance contracts if the contribution base (i.e. among others the sum of remuneration from the contracts) is lower than the minimum wage. The Ministry of Labour and Social Policy estimated that yearly it would bring PLN 650 million more to the Social Insurance Institution. In addition, following the victory of the Law and Justice (PiS) in the parliamentary elections in October 2015, a project to introduce an hourly minimum wage in the case of freelance contracts was introduced by the new government. It should be noted that a similar project has been for a long time also voiced by trade unions, including the All-Poland Alliance of Trade Unions (OPZZ).

As it comes to the specific-task contracts, they provide no job or social security. Paradoxically, although it was designed for tasks which require to create something, it is abused in low-waged low-skilled occupations such as cleaners, janitors, or even security guard. Thus, it is often used by the employers even if there are clear circumstances of employment relationship. Another contradiction which increases the precarity of such workers results from the consequences of the process of tying up nearly all social provisions to waged labour in Poland. Because the specific-task contract is not recognised as the employment relationship by the Polish law, the worker cannot be registered as unemployed and thus has no health insurance neither from the employer nor from the unemployment office.

The number of people working on the basis of civil law contracts as their main source of income has been growing over the recent years. The latest data available from the Central Statistical Office suggests the number of 1,3 million people (8,2 per cent of the employed) in 2014 as compared to 546 700 in 2010 (table 3). The Ministry of Labour and Social Policy reveals a smaller number for 2011, namely 894 319 (5,7 per cent of the employed). The representative survey data of the Public Opinion Research Centre, CBOS, (Hipsz 2014), gives a similar figure for 2013, namely 6 per cent of the employed adult population. The same

report suggests that this form of work is the most popular among young people (24 per cent of those aged 18-24 work with it) and people 65+, the inhabitants of biggest cities, service employees and unskilled workers<sup>13</sup>. 68 per cent of those employed with civil law contracts are men.

**Figure 5. Civil law employment by sectors as per cent of the total civil-law employment (2013-2014)**



Source: GUS (2014, 2015d), own calculations and aggregation.

Note: Statistics cover entities employing more than 9 people and include those with freelance contract and specific task contracts who were not employed on the basis of employment contract as well as those employed with other types of non labour contracts.

Figure 5 presents calculations based on the available statistics concerning the sectoral distribution of civil law employment (as the percentage of the total civil law employment in the entities employing more than 9 people). It is clear that civil law employment concern mostly those in services; administrative and support services section being an absolute leader<sup>14</sup>. However, this type of non-labour employment is also common in manufacturing (14,1 per cent of the total civil law employment and growing) as well as wholesale and retail (10,4 per cent, declining). A visible growth of civil-law employment was also observed in the human health and social work section.

Even if civil law contracts improve chances to be employed, the chances to get permanent employment following civil-law employment are low (Strzelecki et al. 2013: 126). According to the National Labour Inspectorate (PIP) reports (PIP, 2013), the majority of claims against the misuse of the civil law employment were registered in retail (mostly small shops), administrative services, manufacturing and construction, as well as in small and medium enterprises. In 2013, almost 20 per cent of the companies controlled by the PIP

<sup>13</sup> Due to a small sample size, the socio-demographic distribution of workers with civil-law contract need to be treated with caution

<sup>14</sup> Notably, this section includes temporary work agencies and private security services.



violated the Labour Code by employing workers with civil-law contracts even though the conditions of labour employment were met.

### *3.3.2. Self-employment*

In Poland, similarly to the other European countries, self-employment means to provide services or perform work as a legal subject (one-person company) for other legal subjects. Specifically, it signifies that all the risks and costs attached to a business activity, as well as contributions to the social security and health security systems burdens a self-employed. Similarly to those performing services based on civil-law contracts, the self-employed do not enjoy workers' rights guaranteed by the Labour Code, such as the minimum wage or statutory working time. The currently binding Trade Union Act does not allow them to join or organise trade unions. However, as already mentioned, this situation is likely to be changed soon given the ruling of the Constitutional Court in June 2015.

Looking at its roots in Poland, self-employment in its bogus form was an important way of forcing the employment relationship out of the regulations of the Labour Code in the early stage of the Polish capitalism (Trappmann, 2011a). In 2006 the government implemented changes in the fiscal policy of private business activity (changes in the Act on Personal Income Tax, Art. 5b, in force since 1 January 2007) which excluded from tax exemptions (in the form of flat tax rates) those forms of work that bear the notion of employment relationship (Wratny 2008: 31). These changes were intended to limit the interest of employers in bogus self-employment.

However, likewise other civil law employment, bogus self-employment still exist in Poland most likely because there are few tools the workers can use to protect themselves against it and to provide clear evidence of employment relationship described by the Labour Code. Another reason for this are preferential contributions to Social Security Institution (ZUS) for the self-employed "start-ups". Since August 2005, following the changes in the Act on the Social Insurance System, the self-employed who start their business activity are eligible in the period of 24 months to pay their social security contributions from the base amount of 30 per cent of minimum wage in a given year<sup>15</sup>. In other cases, the minimum basis for the contributions is set at the level of 60 per cent of the forecasted average wage (Oczki: 2012: 216). As a matter of fact, the majority of self-employed in Poland pay the minimum contributions possible, which can also contribute to their precarisation in a long term, e.g. as a result of their exclusion from decent pensions (ibidem). This, coupled with self-employment as one of the key tools of the active labour market policies aimed at decreasing unemployment, still attracts young people, especially with higher education, to such type of work. Nowadays, after graduating they are encourage to start their own company either by the employment offices or by the universities which create different opportunities and institutions (such as "Entrepreneurship Incubators") for training and advising on self-employment and providing quite large scope of grants for the "start-ups".

According to the Eurostat, the share of self-employed without workers in the total number of employed persons decreased from 18,1 per cent in 1999 through 14,3 per cent in 2008 down to 13,8 per cent in 2014 (2,2 million, table 3). However, the high share of the self-employed is mostly due to high self-employment in agriculture. If this sector is excluded, the share of the self-employed without workers grew from 6 per cent in 2008 (931 thousand) to 6,8 per cent (1,1 million) in 2014. This is in line with the Central Statistical Office estimation for 2013 which says that about 1,1 million of the self-employed who work outside the

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<sup>15</sup> This relief in contributions does not apply in the case of self-employed who perform the same services for their previous employer as they performed two years before the date of starting their activity.

agriculture (GUS 2015b). Self-employment is dominated by men (67 per cent of the self-employed). About 10 per cent of the self-employed are younger than 30 years old in 2014 as compared to 11,6 per cent in 2008. As demonstrated in table 4, self-employment increased in almost all sectors except for agriculture, wholesale and retail trade and transportation and storage. The highest increase (by 66 per cent) was noted in human health and social work activities, as well as other public service activities; the latter trend could possibly be an indicator of outsourcing present in public services (Kozek 2011). Unfortunately, there is no reliable data on the actual scope of bogus self-employment in Poland.

**Table 4. Self-employed persons without employees by sectors in 2008 and 2014 (in thousands)**

<b>Sectors</b>	<b>2008</b>	<b>2014</b>	<b>2008-2014 % change</b>
Total	2 225,5	2 156,3	-3,1
Agriculture, forestry and fishing	1 294,1	1 093,9	-15,5
Manufacturing	83,7	96,6	15,4
Construction	133,9	159,6	19,2
Wholesale and retail trade; repair of motor vehicles and motorcycles	294,9	267,1	-9,4
Transportation and storage	94,2	77,1	-18,2
Accommodation and food service activities	15,5	20,2	30,3
Information and communication	37,9	48,9	29,0
Financial and insurance activities	33,3	42,5	27,6
Real estate activities	8,6	14,7	70,9
Professional, scientific and technical activities	82,1	134,2	63,5
Administrative and support service activities	19,6	30,2	54,1
Education	20,3	22,9	12,8
Human health and social work activities	38,3	63,6	66,1
Arts, entertainment and recreation	17,3	20,3	17,3

Source: Eurostat, own calculations.

### 3.4. Low wage jobs

The problem of low wages as an expression of precarisation deserves a separate mention in the report. It occurs in various intensity in the case of all categories of contracts discussed so far. In the Eurostat statistics, low wage earners are defined as those employees earning two thirds or less of the national median gross hourly earnings in a particular country.

Following Latvia, Lithuania and Romania, Poland belongs to the EU countries with the highest proportion of low wage earners in the total number of employees (excluding apprentices). It was 24,7 per cent in 2006 and 24,2 per cent in 2010 (the latest data available).

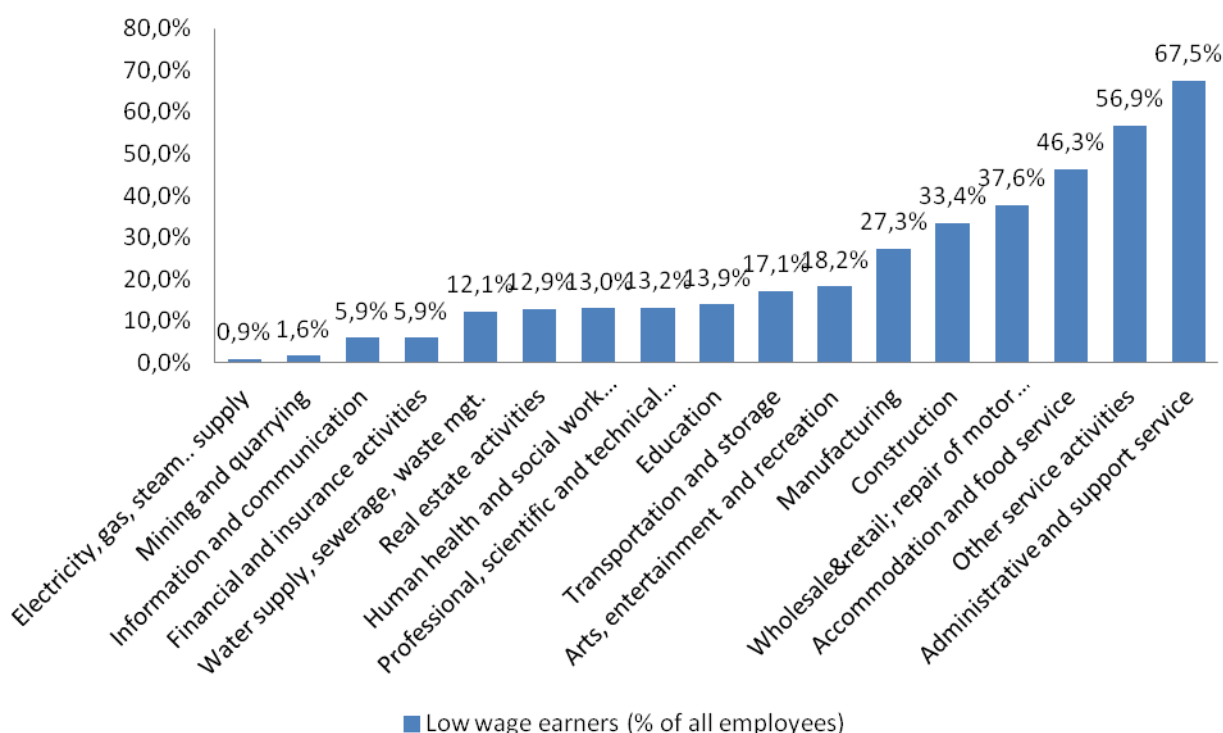
In terms of their sectoral distribution, figure 6 provides a useful summary. The economic activities /sectors involving very high share of low-wage earners in Poland include administrative and support services (67,5 per cent)<sup>16</sup>, accommodation and food services (46,3 per cent), wholesale and retail (37,6 per cent) and construction (33,4 per cent).

Other statistics confirm the relationship between low-wage work and other dimensions of precarisation. Among those with the fixed-term contracts, 42 per cent belonged to the category of low wage earners (as compared to 16,4 per cent of workers with indefinite

<sup>16</sup> See footnote 14.

contracts). Low wage earners are more often women (26,8 per cent of all female employees) than men (21,8 per cent). They are also more often younger than 30 years old (31,3 per cent of all employees in this age category, as compared to 21,7 per cent aged 30-49 and 23,8 per cent aged 50+). According to EU-SILC/Eurostat, 16,4 per cent of the employed and 13,4 per cent of the employees fell into the category of people at risk of poverty or social exclusion. The in-work at-risk-of-poverty rate (live in a household whose equivalised income is situated below the national poverty line) concerned 11,7 per cent of the employed. The most recent GUS report (2015b), there were 1,36 million workers in 2014 whose wages were lower than the statutory minimum wage (PLN 1 680 in 2014), i.e. 13 per cent of all employees. Their distribution by sectors suggests that workers in such a situation were strongly represented in construction (28 per cent of all employees), administrative services (25 per cent), retail, repairs and horeca sectors (24 per cent).

**Figure 6. Low-wage earners as a proportion of all employees (excluding apprentices) by sectors (2010)**



Source: Eurostat, own calculations

#### 4. Development of dual labour market in Poland: concluding remarks

The first part of the report provided an overview of the various conditions, forms and dimensions of precarious work in Poland. Since 2009, Poland retains its infamous status of a country with the highest share of employees with a contract of limited duration in the European Union (28,4 per cent in 2014). It is also estimated that 1.3 million workers in Poland performed their jobs in 2014 based on various service, civil-law contracts as a sole form of their work, i.e. without an additional employment contract (GUS 2015c). In the late 2000s, this situation began to raise serious concerns of trade unions. Mass media campaigns,

street protests, as well as national and international pressure on legislative changes with respect to the problems of trade union interests representation of precarious workers, raising minimum wage and counteracting the expansion of civil law and fixed term employment contracts started to bring first results. In addition, following the parliamentary elections in October 2015, the new government of the Law and Justice also took up some of trade union postulates, such as the minimum hourly wage for freelance contracts and **solo self-employed**.

As the time passed, the issues of temporary contracts were also addressed by the Polish government, a part of employer organisations and European Commission. In the 2015 recommendations of the European Commission for Poland, it is suggested that “*rigid dismissal provisions, long judicial proceedings and other burdens placed on employers encourage the use of fixed-term and non-standard employment contracts. Furthermore, the perceived high cost of contracts covered by the labour code leads to excessive use of civil law contracts (umowy cywilno-prawne), which are attractive to employers due to the associated lower social security contributions*” (European Commission 2015). While the EC diagnosis is similar to the opinions of the Polish employer organisations, trade unions point to the precarious and low-wage status of atypical employees, legal and practical barriers to their unionisation and the exclusion of a part of them, in particular those with specific task contracts, from social security and health security systems (Mrozowski, Krasowska, Karolak 2015). In the next part of the report, trade union and employer organizations activities to counteract the expansion of dual labour market will be discussed in a more detail.

## **PART II: FACING PRECARIOUS EMPLOYMENT IN SELECTED SECTORS**

### **5. Social partners responses to precarious employment at the national level**

The main task of empirical research in the PRECARIR project was to engage in the country-specific, sector-specific and comparative study of the strategies and actions undertaken by social partners in order to (1) address the rise of the dual labour market and the growth of precarious work; (2) protect, represent and improve through collective bargaining and social dialogue the social rights of vulnerable employees' groups; (3) adjust industrial relations structures and bargaining procedures to better reflect the character of post-crisis dual labour market. Even though the main project focus is on the sectoral-level developments, it has to be mentioned that a lot of union and employer responses to precarious employment in Poland took place at the company and national levels in the recent years. The reasons for this are manifold, including the decentralised nature of collective bargaining, the central role of the Labour Code in regulating employment conditions and the relative weakness of sectoral social dialogue (cf. Gardawski et al. 2012). Consequently, a brief discussion of the national-level responses of trade unions and (to lesser extent) employer organisations regarding the precarisation of employment seems to be justified.

As discussed elsewhere (Czarzasty and Mrozowski 2014; Mrozowski et al. 2015; Trappmann 2011), trade unions in Poland did not systematically address the problems of non-standard employment until the mid 2000s<sup>17</sup>. There are various reasons of this situation,

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<sup>17</sup>The following part of the report sums up arguments presented more extensively in other publications by Authors, including Mrozowski, Krasowska, Karolak (2015, 2016/forthcoming) and Czarzasty, Mrozowski 2014, supplemented by the references to original data collected within the PRECARIR project.

including (1) the legal barriers to the unionisation of precarious employees due to the regulations of Trade Union Act which excluded those with civil-law contracts and the self-employed from union membership (Czarzasty and Mrozowski 2014); (2) the anti-union employer strategies, workers' fear of job loss, distrust of unions, and limited knowledge of workers' rights; (3) reluctance of unions to get involved in trade union organizing of temporary workers who are likely to leave trade unions; (4) very low collective bargaining coverage (20-25 per cent), in particular at the sectoral level which in practice limited the possibility to cover atypical employees by collective agreements (Mrozowski 2014).

Yet, the sharp increase of temporary employment contributed to its raising relevance in the trade unions' agendas in Poland by the end of the first decade of the 2000s. The stalemate in tripartite consultations on minimum wage and labour market legislation in 2009-2013 and the subsequent withdrawal of trade unions from the Tripartite Commission for Social and Economic Affairs in June 2013, as well as the limited scope of collective bargaining at the sectoral level, forced unions to search for new forms of expressions of discontent. They included public and media campaigns, street protests, and pressure to change legislation. As a result of trade unions activities in new and traditional media strengthening union "discursive power" (Urbański 2014), the term "junk contracts", connected mostly with the civil-law contracts, made its way to mainstream political discourse. The most spectacular campaign against "junk contracts", the "Sisyphus", was carried out by NSZZ Solidarność in 2012 and involved spots in the Internet and major national media. The issue of "junk contracts" was also featured during the anti-austerity protests and union demonstrations in 2011-15. The demand to counteract the extensive use of "junk contracts" was formulated in the first general strike in Poland since 1989, in the Upper Silesia region in 2013, and in the "Days of protests" organized by all three national trade union confederations in September 2013. It has to be noted that many campaigns involved union cooperation with non-union actors, including both left-wing and right wing social movements. Radical trade unions, such as the All-Poland Trade Union Workers' Initiative (OZZ IP) and the Confederation of Labour OPZZ, experimented with various forms of organising those with civil-law contracts and self-employed (I17, I18, I19), for instance by affiliating them within the milieu union committees (*komisje środowiskowe*) considered the basis for establishing inter-company trade union organisations. OZZ IP also organised an information campaign and demonstration "We, Precariat".

In the recent years, the Polish trade unions, similarly to their CEE counterparts (Kahancová 2015), have also become very active in applying legal pressure at the national, and increasingly at the international, levels to improve the situation of precarious workers by changing labour law. This concerned both sectoral initiatives (e.g. proposals on temporary agency work, see section 10) and cross-sectoral regulations. The examples of the latter actions include NSZZ Solidarność complaints to the European Commission on the improper implementation of Council Directive 99/70/EC (on temporary employment) in Poland, a complaint lodged with the ILO by NSZZ Solidarność in 2011 (on the discrimination of self-employed and those with civil-law contracts with regards to their rights to join trade unions), as well as the complaint made to the Constitutional Tribunal of Poland by OPZZ requesting a review of constitutionality of the Trade Union Act in the part regarding restrictions on the freedom of association in the case of non-Labour Code employment (Czarzasty, Mrozowski 2014: 15).

On the employers' organisations' side, the flexibilisation of employment has been systematically supported in the recent years, for instance in the case of debates on the changes in the Labour Code regarding the use of temporary contracts (2003-2004, 2015) and the flexibilisation of working time (2013). Employer organisations voiced their criticism of too far-reaching increases of minimum wages arguing that they could lead to job losses and

unemployment growth. For the same reasons, they also criticised trade union proposals to introduce the hourly minimum wage for freelance contracts (Money.pl 2015). Most recently (2015), they supported the extension of the maximum length of temporary employment contracts duration to 48 months while unions opted for 24 months. At the end, the compromised proposal of 36 months (including 3 months probationary period) was made by the representatives of the Ministry of Labour and Social Policy (II6, see section 3.1.1 for details). Yet, some employer organisations still suggest that the higher level of protection for fixed-term contract should be compromised by lowering protection of the standard open-ended contracts, otherwise the changes would lead to the overall decrease of contracts regulated by the Labour Code (Infor.pl 2015a). More generally speaking, even if the representatives of employer organisations, such as the Lewiatan Confederation (Infor.pl 2015b) acknowledge the overuse of civil-law employment contracts in Poland and criticize the cases of replacing employment contracts by civil law contracts, they also emphasise that civil-law employment cannot be eliminated from the economy. Instead, they propose to “progressively increase social security of those employed with civil-law contracts and decrease stiff conditions of employment based on labour employment contracts” (*ibidem*). Another nationally representative employer confederation, Employers of Poland (Pracodawcy RP), considered “short-sighted” recent governmental plans by Law and Justice (December 2015) to make contributions to social security system obligatory in case of all civil-law contracts and linking the level of the self-employed contributions with their level of income, in order to finance the plan to return to the retirement age of 60/65 (Infor.pl 2015c). Even though nationally representative employers' organisations generally supported the flexibilisation of labour market, it has to be noted that they were also involved in social dialogue aimed at reducing the scope of precarious employment, for instance in the case of changes in the Public Procurement Act (see section 8, on the construction sector) and the Roundtable on Temporary Agency Work (see section 10). Employers are traditionally strongly focused on the issues of employability of workers, stressing the need to create stronger linkages between education system (at all levels) and labour market (Mrozowski 2011). In conclusion, while some forms of dualisation of labour market seem to be accepted as unavoidable and beneficial for all parties (workers, employers and national economy as such), the overuse of civil-law employment, especially in case of breaking the Labour Code regulations, is seen in rather negative light.

The first outcomes of actions undertaken by unions and employer organisations to halt the expansion of precarious employment have already been noted in the earlier parts of this report. They include, among other things, changes in the Labour Code regarding temporary contracts (2015), the verdict of the Constitutional Tribunal (2015) opening the possibility to unionise self-employed and those with civil-law contracts and the changes in the Act on Social Security System (introducing obligatory contributions to ZUS from all freelance contracts up to minimum wage). Importantly, at least some of these changes were triggered by the government of Civic-Platform and Polish People's Party, in the context of presidential and parliamentary elections in 2015. Specific promises to counter-act precarious jobs were also made by the main oppositional party, the Law and Justice (PiS). In the course of the presidential campaign, its candidate and the current president, Andrzej Duda, concluded an agreement with NSZZ Solidarność. In exchange for union support in elections, he promised to support policies aimed at fulfilling some of trade union postulates, such as lowering retirement age, raising minimum wage to 50 per cent of the average wage, retreating from the Labour Code changes regarding the flexibilisation of working time and counteracting the use of “junk contracts.”<sup>18</sup> Following the double victory of the PiS (in presidential and

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<sup>18</sup>See: [http://www.solidarnosc.org.pl/krosno/umowa\\_programowa.pdf](http://www.solidarnosc.org.pl/krosno/umowa_programowa.pdf) (accessed on 6 January 2016).



parliamentary elections in 2015), it remains to be seen to which extent electoral promises, including those concerning the fight against precarious employment, will be kept by the new governing party. Most recently, the PiS reaffirmed its plans to introduce minimum hourly wage for freelance contracts and solo self-employed in 2016.

It needs also to be noted that a joint trade union boycott of the Tripartite Commission for Social and Economic Affairs (2013-2015), reflecting their criticism of the lack of the social dialogue with the Civic Platform-Polish People's Party government, resulted in the reforms of tripartite intuitions of social dialogue in Poland. In September 2015, the new Social Dialogue Council (SDC) Act came into force as a result of a compromised proposal made by social partners. The Social Dialogue Council, endowed with broader prerogatives (for instance, the right to propose legislative changes which have to be proceeded by the government), replaced the Tripartite Commission. Again, the future will show to which extent new tools will be effectively used to counteract the further labour market dualisation.

All in all, the current political situation in Poland, following the electoral victory of the Law and Justice, makes it difficult to predict the further development of social dialogue at the national level. It makes even more interesting to look at the level of sectors in which long-term mechanisms of precarisation and responses to it can be observed in more detail. The remaining part of the report will focus on the rise of precarious employment conditions and social partners' initiatives to counteract them in five sectors: (1) health care (hospitals), (2) metal (steelworks), (3) construction, (4) retail, (5) temporary agency work. In the context of highly decentralised collective bargaining system of Poland, the sector-centred analysis allows us to see to which extent sectoral specificity influences the forms of precarisation and mediates social partners' responses to the rise of a dual labour market.

## **6. Health care sector (hospitals)**

### **6.1. A brief characteristics of the sectors' economic position and employment trends**

The process of precarisation of work in the health care sector is inherently related to the systemic changes it has underwent since the late 1990s, resulting first in commercialisation and afterwards in privatisation of both services and organizational units. The major health care reform, introduced in 1997 and implemented in 1999, brought about new financial discipline dividing the services which could be paid by the social insurance from the ones which would not be covered by it, and opened the sector for private services providers. The changes, along with keeping the wages on very low level, resulted in a large reduction of the labour force and many closures of the hospitals which evoked mass protest and strikes of sectoral trade unions, mainly doctors and nurses (Charkiewicz, 2009; Kubisa 2014). The process accelerated in 2003 with creation of the National Health Fund (Narodowy Fundusz Zdrowia – NFZ) – the institution which centralised the public contributions to the system and began to decide how to divide them. According to Charkiewicz “in 2004 57 per cent of the revenues to NFZ came from the contributions, in 2007 93,67 per cent” (ibidem: 7). It means that the level of funding of the health care became strictly related to the level of wages and incomes from economic activity of the population (as opposed to the health needs of the society). However the so called “basic basket” of health services covered by the NFZ and the assessment of their costs was not established until 2007.

At present “the basket” still lacks the calculation of labour costs and does not cover all services, especially those performed by nurses. The dependence of the expenditures on health care on the revenues from the NFZ as well as underestimation of the labour cost of health care services created a financial gap in the system and brought about spending cuts. Since 1997 the share of expenditures on health care system in total expenditures from the public budget has

dropped from 15,03 per cent to 2,27 per cent in 2009 (Zachorowska 2010: 45). According to the National Health Account (GUS 2010, 2014) the share of expenditures on health care system in GDP has been decreasing since 2009 from the level of 7,2 per cent to the level of 6,38 per cent in 2013. The structure of current expenditure on health care system since 2008 has been similar and in 2013 constituted of 70,6 per cent expenditures from the public sector (mostly from the revenues of NFZ from the tax payers' contribution to the health insurance – 61,2 per cent) and 29,2 per cent from the private sector – of which 23,6 per cent came from individual households.

Moreover, the funding system of NFZ created the situation in which the units unable to keep up with the financial regime (i.e. providing more services than contracted by NFZ) run up a debt. This concerns most importantly the hospitals. Relying on the data of the Ministry of Health the level of hospitals overdue debts, reaching the peak in 2004 of 5.68 billions PLN, slowly started to decrease, however the biggest drop can be observed between 2012 and 2014 (the indebtedness decreased from 2.36 to 1.81 billions PLN)<sup>19</sup>. This shift is related with the introduction of the Act on Medicinal Activity (*Ustawa o działalności leczniczej*) in 2011, by which – to deal with the indebtedness of the public hospitals – the government enabled to transform such units into private companies either managed by the local government or private institutions.

According to GUS in 2008 there were 732 hospitals in Poland out of which 546 public ones and 186 non-public (private or commercialised units). Since then, the overall number of hospitals has been growing together with the amount of non-public units and the decrease of public ones.

**Table 5: The structure of hospitals in Poland**

	2008*	2011*	2014**
Public hospitals	546	501	467
Non-public hospitals	186	313	601
Total	732	814	1068

Source: \*GUS; \*\* Mądrala 2014 (based on the calculation derived from the Registry of entities performing therapeutic activity, <http://rpwdl.csioz.gov.pl/>).

According to the other source of data (Mądrala 2014) in 2014 the entities which gained contracts for hospital services from the NFZ constituted of 467 public ones and 601 private or commercialised ones. Most of hospitals' debt was and still is generated by the hospitals managed by local governments thus those entities are the first to be privatised. Between 2011 and 2013 (since the introduction of the Act on Medicinal Activity) 48 hospital units have been transformed into companies (Ministry of Health<sup>20</sup>). According to this Act, as a result of ownership transformation, the new hospital-companies are granted higher subsidies which shall help them to reduce their debt. New legal regulations have established a dual “private/public market” in which private hospital-companies are still largely financed by the public institution – the NFZ (e.g. in 2012 96 per cent of whole expenditures on hospitals came from the public funds, GUS 2014).

At present the managerial system in the health care is deeply deregulated and divided between different administrative units. As it comes to hospitals, apart from privately owned

<sup>19</sup> The total indebtedness of public hospitals in the first quarter of 2014 amounted to 9, 92 billion zł. Data derived from: <http://www.mz.gov.pl/system-ochrony-zdrowia/organizacja-ochrony-zdrowia/zadluzenie-spzoz> (accessed on 5 January 2016)

<sup>20</sup> See: <http://www.mz.gov.pl/system-ochrony-zdrowia/organizacja-ochrony-zdrowia/restrukturyzacja-i-przekształcenia> (accessed on 5 January 2016).



units in the sector (non-unionised or covered by various union organizations), there are 6 diverse public institutions responsible for managing hospitals<sup>21</sup>. Furthermore, in 2014 in the private health care market there were 6 holdings which owned 46 private hospitals (Mađralla, 2014). This kind of managerial system in the sector not only disperses and diffuses the responsibility but also separates the coordination of the system (by the Ministry of Health) from its financing (by the NFZ). In the effect, as the NFZ only deals with contracting particular services (and neither wages nor working conditions) and the Ministry of Health has no direct influence on managing hospitals, there is no coherent representation of the employers as well as the government's interests in the sector. This was confirmed by interviews carried out for the sake of the PRECARIR project.

**Table 6. Basic employment trends in the health care sector, in thousand (2008-2014)**

Year	2008	2009	2010	2011	2012	2013	2014
<b>Employment (GUS)<sup>1</sup></b>	No data	586,9	597,8	607,1	616,6	628,5	645
<b>Employment (Eurostat)<sup>2</sup></b>	639,2	651,9	674,3	663,6	669,1	693,9	692,8
<b>Employment in public sector GUS</b>	No data	403,2	396	389,2	381,1	380,9	376,5
<b>Employment in private sector GUS</b>	No data	183,7	201,8	217,9	235,4	247,6	268,5
<b>Share of employees with labour contract in private s. (%)</b>	No data	57,3	58,3	56,3	54,1	53,2	53,0
<b>Nurses and midwives (Employment, GUS)</b>	204,6	207,9	206,9	208,9	236	223,4	221,6
<b>Doctors (employment, GUS)</b>	90,9	90,9	91,7	93,2	97,5	97,6	100,8

Source: (1) GUS, Statistical Yearbooks; (2) Eurostat Labour Force Survey (Note: Age 15-64);

Although at present there are more non-public hospitals in Poland, still the majority of expenditures on health care system goes to public units (81 per cent of the yearly NFZ funds, Mađralla 2014). As table 6 points out, since 2009 the amount of labour force in the health care sector has been increasing. Until 2014 the number of employees in the sector grew by 58,1 thousands, most importantly among the population of nurses and midwives which rapidly expanded between 2011 and 2012 (by 27,1 thousands) as well as (most probably) among non-medical staff and allied health professionals. This interesting trend could be explained by privatisation and commercialisation of the sector.

<sup>21</sup> According to the Ministry of Health the entities that perform therapeutic activity (including hospitals) can be run by or organised as: 1) entrepreneurs as defined by the Freedom of Economic Activity Act; 2) independent public health care units; 3) budgetary units; 4) research institutes; 5) foundations and associations whose statutory purpose is to perform healthcare tasks and whose Articles of Association allow carrying out therapeutic activity; 6) churches, ecclesiastical legal persons or religious unions (within the scope of their therapeutic activity), cf. <http://www.mz.gov.pl/en/healthcare-system/healthcare-organization/entities-that-perform-therapeutic-activity> (accessed on 5 January 2016). Independent public health care units and budgetary units can be managed by local government (on 4 different levels) and the state (the Ministry of Interior and Administration and Ministry of Health).

Although at present the majority of labour force still works in the public sector (58,4 per cent), the public sector employment is decreasing while the opposite trend can be observed in the private sector in which the number of employees has grown by 84,8 thousands since 2009. However, according to the interviews with unions officials in the sector, there is an ongoing problem with labour shortages especially among nurses and midwives: *“The employers in the health care sector are hiding labour shortages because they employ people on extra contracts [civil-law contracts – M.M.] [...] they created the illusion of higher wages through extra work. And by this they hidden the gap, that is the lack of nurses and midwives on the labour market, if not for this fact, there would already be a crisis in many hospitals.”* (I2). The data derived from GUS on paid employees (hired on the basis of the labour contracts) point that in 2014 there were 518,9 thousands employees in the health care sector, thus in comparison to the employment figure in 2014 (645 thousands), the difference constitutes of 126,1 thousands. Also, in the private health care sector only 53 per cent of all labour force is hired based on the labour contracts (and the number has been decreasing since 2010, see table 6). This could point to both the high level of self-employment in the sector as well as – according to our interviewees – to the hybrid/dual form of employment, that is the mixture of labour and non-labour contracts.

## 6.2. Common forms of precarious work

According to our interviewees most important forms of precarisation in the health care sector are dependent self-employment of doctors, nurses and allied health professionals, the outsourcing of non-medical stuff and large wage discrepancies.

As pointed by our interviewees, the precarisation of work in the sector have at least three historical markers linked to the encroaching commercialisation of health care. According to both a government official (I3) and the National Secretariat of Health Care (KSOZ) NSZZ “Solidarność” leader (I1), there were two waves of “labour outsourcing” resulting from either privatisation of services or labour shortages. The first group which underwent such process was the non-medical staff of the hospitals: cleaners, laundry and kitchen workers who became employed (often on civil law contracts) by private companies subcontracted by the hospitals. The second group were doctors. In 2007 the Polish government implemented EU directives limiting the number of working hours for waged workers. The hospitals had to limit the working time for the doctors which (in combination with labour shortages), forced to look for a solution which could omit the new working hours quotas. Thus, to fill the gaps in the staff, many doctors, apart from their regular employment in the hospitals, also became self-employed.

At present, as estimated by the KSOZ NSZZ “S” leader, circa 75 per cent of all doctors are self-employed in Poland (I1). This had a spillover effect for other professions such as nurses, midwives, x-ray technicians and laboratory and ambulance workers who either became the employees of private companies (often outsourced by public institutions) or self-employed. Especially for a large number of nurses and midwives the hybrid employment (regular full time employment in the public sector along with self-employment or civil-law employment in the private sector) became a norm. In 2011 the Act on Medicinal Activity, based on previous decision of The Constitutional Tribunal according to which the nurses and midwives profession could be performed on a freelance basis, formally regulated the self-employment of nurses in the hospitals. Since then, the process of hybrid employment of medical staff has gathered momentum. As estimated by one of the regional leaders of the All-Poland Trade Union of Nurses and Midwives (OZZPiP), at present, because of relatively low wages, circa 65 per cent of all nurses and midwives have an extra civil law contract and civil law contracts as the main source of income constitute 20 per cent of the total employment in

this profession (I2). When asked about the bogus self-employment, our interviewees could not estimate its level. However, the KSOZ NSZZ “S” leader pointed that although it is illegal to force doctors and nurses to become self-employed, the practices of bogus self-employment are related to: *“the position one occupies in the career, that is the younger one is the less choice one has”* (I1).

The growing number of the self-employed in the sector is also visible in the Eurostat data for the Human health and social work activities. Since 2008 the share of own account workers in the total employment has grown from 4,5 per cent to 7 per cent in 2014 (table 7). However according to GUS in 2014 there was 19,6 per cent of employers and own account workers in the total population of employed in the health care sector, all of them in the private entities (constituting 47 per cent of all employed in the private sector). Some estimation of the level of dependent employment is given by the GUS with the category of “persons employed on the basis of contracts which do not have the same nature as in the case of labour contracts” and which are different from freelance and specific task contracts (GUS 2014a, 2015d). Their number grew from over 61 thousand in 2013 to 72,5 thousand (ca. 8,8 per cent of the total employment) in 2014 (no earlier data is available).

**Table 7. Temporary employment, part-time employment and self-employment in Human health and social work activities sector as the per cent of the total employment**

	2008	2009	2010	2011	2012	2013	2014
Share of temporary employees in total employment (%)	16,2	16,0	17,0	14,9	15,0	16,2	16,6
Share of part-time employees in total employment (%)	8,3	9,5	9,6	9,2	9,0	8,8	9,0
Share of self-employment (own account workers) (%)	4,5	4,9	5,5	5,5	6,2	7,0	7,0
Share of self-employment (total) (%)	6,0	6,5	7,8	7,7	8,2	8,8	8,5

Source: Eurostat Labour Force Survey, Notes: Age 15-64, Section Q (Human health and social work activities), Nace R2

Apart from that, as pointed by the data in table 7, one of the most visible forms of precarisation in the sector is the temporary employment which since 2008 oscillates around 16 per cent. Looking at the data given by the Central Statistical Office of Poland, the level of other precarious forms of employment (such as employment through Temporary Work Agencies, freelance and specific task and part-time contracts) is rather insignificant in the sector (in 2014 there were 0,08 per cent of TAWs, 4,4 per cent of both freelance and specific task contracts and 4,9 per cent of part-time contract in the total employment in Human health and social work activities sector, GUS 2015). Thus, the share of temporary employees in the sector is most probably related to the relatively high number of labour code temporary employment contracts.

**Table 8. Dimensions of precariousness in the health care sector (hospitals)**

		Quality of working conditions dimension					
	Regulated by:		Wages	Working time	Job security	Social security	Representation (voice)
The formal employment status dimension	Labour Code	FT open-ended contract	No regulation at the sectoral level, minimum wage set by law	Regulated by Labour Code, but common practice of extending working time due to hybrid employment (mixed private and public)	Dismissal periods guaranteed by Labour Code	Regulated by Labour Code setting a standard	Limited worker organisation (unions mostly in the public sector)
		Fixed-term contract	Low wages of nurses and midwives force double employment (hybrid of Labour Code contracts and Non Labour Code contracts)		Dismissal periods guaranteed by Labour Code - until February 2016 much shorter than in FT OE contracts		
		Part-time contract			Dismissal periods guaranteed by Labour Code	Lower contributions due to the nature of contracts	
		TAW			The scope of the usage of temporary work agencies in the sector is very limited.		
	Non Labour Code	Self-employment, bogus self-employment	No regulation by Labour Code or other regulations	Not regulated	No job security. In cases of hybrid employment job security provided by the labour contracts	Usually minimum statutory contributions	Membership among those with non-Labour Code contracts limited to those having hybrid employment (both LC and non-LC)
		Civil law contracts	No regulation by Labour Code or other regulations	Not regulated	No job security, high rotation - relatively low incidence	No social security contributions in case of specific task contracts; obligatory contributions (with exceptions) in case of freelance contracts	

The changes of the health care sectors as well as its employment trends described above have three main side effects. Firstly, since the reproduction of the labour force is still on a very low level, there is an ongoing intensification of work, especially for nurses and midwives. Secondly, because of the labour shortages especially among doctors with unique specialisations who have better bargaining position, the hybrid employment brought about huge wages differentials among doctors and between doctors and nurses. As estimated by one of our interviewees: *“the wage differences is that, there is 4,5 thousands zloty for a doctor on labour contract and 17,5 thousands for the self-employed doctor”* (I1). According to the other source of data (NIK 2014) the wages of doctors hired on civil law contracts in public hospitals varies from 55 PLN up to 110 PLN per hour. The average monthly basic wage (without any bonuses, such as seniority bonus, duty bonus etc.) for doctors employed on employment contracts varies from 3500 up to 5100 PLN, and respectively for nurses: from 2000 PLN up to 2700 PLN<sup>22</sup>. Thirdly, quoting one of our interviewees, this has led to *“the decomposition of the health care system workforce”* (I1) causing conflicts, drop in the union density, and most importantly the loss of the common interest in a collective bargaining.

The deregulation of the health care system in terms of different levels of managerial system and the decomposition of the workforce blocked not only social dialogue in the sector but also the possibility of mass mobilisation of the workforce. This situation is also an outcome of the lack of the sectoral level collective agreement (the last effort to establish one was in 1998, however it failed). On trade union side, four most important organisations include the National Secretariat of Health Care (KSOZ) NSZZ “Solidarność”, the All-Poland Trade Union of Nurses and Midwives (OZZPiP), Trade Union of Doctors (ZZL), the Federation of Healthcare and Social Care Employee Unions (affiliated to OPZZ). Trade union density (as estimated by GUS, 2015c) in the health care is moderate (21 per cent) and mostly concentrated in the public sector. On the employers’ side, according to the Ministry of Health, there are 11 representative organisations of health care services providers (consolidating employers of the sector)<sup>23</sup>. However, almost all of them represent only the private sector entities. In consequences, as stated by the KSOZ NSZZ Solidarność leader, *“We [the unions – M.M.] don't have partner to negotiate with. On the one side. there are three union federations and on the other side there are at least 7 managerial institutions in the sector, starting with the Ministry of Health, cities, villages and voivodeship majors, representatives of the Ministry of Interior and Administration, as well as particular directors of hospitals and the presidents of private ones. There is no one really to talk with”* (I1).

According to the union representatives (I1, I2) the sectoral level social dialogue is rather illusory. It is interpreted mainly a result of a *“terrible mess”* in the managerial system of the health care sector and *“bad will”* of the state administration which does not want to comprehend the basic problems in the sector reported by the unions (such as labour shortages, the bad quality of the services due to the high workloads and too little funding in the system), and is focused only on the economic calculations of the health services.

### 6.3 Unions and governmental actions to tackle precarious work

When it comes to unions responses to one of the main problems in the health care system, i.e. self-employment (especially its bogus forms), there is quite clear stand that the unions should act to either **reduce** their scope at large or **eliminate** them from the public sector. However there are significant discrepancies in their perspective on precarisation of work in the system, especially between the discursive level and organising practices. On the one hand trade unionist claim that dependent or bogus self-employment is a *“pathology”*: *“We [NSZZ Solidarność, Health Care Secretariat] find those forms of self-employment which result from economic coercion, or form the*

<sup>22</sup> The record holders, two cardiologists, in the entities controlled by the Supreme Audit Office earned 533 - 590 thousand PLN per year (NIK 2014: 20).

<sup>23</sup> Cf.: <http://www.mz.gov.pl/system-ochrony-zdrowia/organizacja-ochrony-zdrowia/wykaz-reprezentatywnych-organizacji-swiadczeniodawcow> ((accessed on 5 January 2016)

*need to simply have a job, as evil, as the breaking of workers' rights and we perceive it as a pathology. And we often postulate, to different successive governments, to liquidate them" (I1).* On the other hand, they acknowledge that if one wants, one has to have a choice of being self-employed: *"We [the union] cannot forbid nurses to do it [...] that is why we focus on raising awareness of nurses rather than forbidding them something" (I2).* In the context of organising, there is also an attitude that among those self-employed the union is *"unnecessary link, because if the two sides agree on something, there is no place for the union here"* and that there were cases when the self-employed nurses and doctors actually acted against unions' efforts to limit civil-law employment in the sector<sup>24</sup>. Nevertheless both our interviewees claim that the unions should represent all employees in the sector regardless of the type of the contract. As stated by the representative of the All-Poland Trade Union of Nurses and Midwives (OZZPiP) *"At present the law limits us, but we want to change it, we will see how it goes [...] We would like to be responsible for collective negotiations for the self-employed, such employees could give us a mandate to represent them to negotiate on their behalf in particular work place."* (I2).

One of the side effect of the hybrid employment in the sector, is that the unions, although not deliberately, do unionise employees on civil law contracts. Thus we could point that unions approach toward precarious employees is more **inclusive**, however there is no deliberate strategy of organising. On the other hand, the unions try to act against the precarisation in the sector also in other spheres than the type of contracts, such as wages and working time. In 2006, the OZZPiP worked out a spectacular success – a 30 per cent pay rise. However, actual pay increase had to be negotiated at the level of hospitals. Significant disparities between the increase in the wages of doctors and nurses and hospitals at the level of poviats (basic administrative units) as compared to specialised hospitals in larger cities fuelled successive wave of nurses' strikes. In June 2007, OZZPiP held protest in front of the Prime Minister's Chancellery in Warsaw, which gave rise to the so-called 'White Village' protest next to the occupied building for almost four weeks. Later, in 2011, the same union organised an occupational strike in the Parliament against civil law employment of nurses and midwives, however without any successes. There were also actions which unions unilaterally undertook to tackle the flexibilisation and intensification of work and low wages. For example, in one of the hospitals the Health Secretariat of NSZZ Solidarność undertook a successful effort to unionise non-medical staff in reaction to a threat of work force outsourcing.

The ongoing unions' actions to limit the precarisation in the sector seems to head in a similar direction. Both the Health Secretariat of NSZZ Solidarność and the Trade Union of Nurses and Midwives (OZZPiP) demand more precise regulation of particular occupational groups in the system as well as the inclusion of working and payment conditions into the NFZ's basket of services, what consequently could result in conditioning of the particular hospitals' contracts with NFZ by clauses concerning employment conditions.

In 2015, the Trade Union of Nurses and Midwives threatened to organise a general strike for pay rise of 1500 PLN and increase the amount of nurses and midwives. As a result of lengthy negotiations, in the context of upcoming parliamentary elections, the Ministry of Health agreed for a pay rise of 300 PLN (on average) for nurses and midwives in the entities contracted by NFZ, depending on the decisions of directors negotiated with the representations of nurses and midwives (unions), starting from September 2015. This resulted in angry reactions of other occupational groups in the health care. As a result, in November 2015, the representatives of unions (NSZZ Solidarność and OPZZ) and employers organisation of the private sector (Lewiatan Confederation, Pracodawcy RP) developed a joint statement and recommendation for the Ministry of Health to regulate the system of financing the wages in the sector. They suggested that *"the primary source of the conflict in the area of wages does not seem to be a low level of wages of nurses and midwives, but a growing over years disproportion between the wages of various occupational groups, in*

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<sup>24</sup> In 2011, during the occupational strike in the parliament of Nurses and Midwives Union against civil law employment, the association of self-employed nurses and midwives, which appeared in the parliament during the strike, did not support their postulates and blacklegged their action (I2).



particular in relation to the wages of doctors.” (*Wzrost wynagrodzeń...*:20) They criticized pay raise for single occupational groups and instead proposed to regulate the “referential ratios of wages” (*referencyjna proporcja wynagrodzeń*) among all groups in the sector. In other words, trade unions and employer organisations suggested to create tariffs of wages, announced by the President of the Agency of Evaluation of Medical Technologies and Tariffs (Agencja Oceny Technologii medycznych i Taryfikacji), in consultation with relevant stakeholders. In conclusions, they suggested that the proposed solution would make “social dialogue of employees, employers and the government on the value of wages to focus not on a concrete level of wages of a particular group, but concern instead public spending on health care, distribution of means for the types of services of various scope and relative proportions or disproportions of wages in specific occupational groups.” (*Wzrost wynagrodzeń...*: 25). Following the change of the government after the Law and Justice victory in October 2015, the problem of such overall regulation remains still open and has already become a subject of debate during the first meeting of the newly established Social Dialogue Council in December 2015<sup>25</sup>.

Other than the above mentioned joint statement of trade unions and employers regarding a tariff system to **eliminate** huge wage differentials, the approach of employers organisations in the health care toward the problems of precarious employment is difficult to assess given the limited organisation of employers in the public sector. However, if we take under consideration that the Ministry of Health could be (from some perspective) named as the coordinative body for the public sector health care, we could say that the attitude here has been heading towards a tolerated **expansion** of civil law employment. When directly asked about the good practices for limiting the negative effects of the dual labour market, the representative of the Ministry of Health responded: “*From our point of view, there is for sure the issue of increasing the labour force supply*” (I2). In line with such arguments, in a long-term perspective larger amount of nurses and doctors could counteract the situation when an employee is hired in the multiple workplaces (on labour and non-labour contracts), and thus the situation when labour shortages create the intensification of work (both in terms of time and workloads). Also, looking at the scope of problems created by the incoherent managerial system of the hospitals and their indebtedness, the Ministry of Health undertook some steps to create a “map of health needs” in order to enforce the “rationalisation of the relocation of the health care system resources”<sup>26</sup>. It is a long-term project to develop prognostic tools through looking at the demographic and epidemiological trends in particular regions of Poland. Again, it remains to be seen to which extent this project will be followed by the new government.

## 6.4 Conclusion

The health care sector is characterised by incoherent and fragmented managerial system introduced by legislative changes dating back in the late 1990s. As a result, we can observe on the one hand further commercialisation and privatisation of the public sector health care services which have led to the development of the dual public/private market. It seems that major problems in the sector: the long-term issue of labour shortages, the outsourcing of non-medical staff and the growth of self-employment of doctors and nurses result from this form of dualisation (enforced in 2011). On the other hand, we can also observe the limitation of the range and scope of social dialogue on sectoral level due to the dispersed public/private responsibilities and interest representations. Although the Tripartite Sectoral Team on Health Care by the Ministry of Health is currently in the process of reconstruction, there is no institutionalised form of joint, collective negotiations of working conditions of different occupational groups within the health care sector. Apart from very few union success and some undertaken actions, the unions in the sector did not manage to stop the process of precarisation of employment. In addition, they seem to be increasingly divided by

<sup>25</sup> <http://www.dialog.gov.pl/aktualnosci/art,578,komunikat-z-posiedzenia-rady-dialogu-spoiecznego.html> (accessed on 5 January 2016)

<sup>26</sup> <http://www.mapypotrzebzdrowotnych.mz.gov.pl/> ((accessed on 5 January 2016)

occupational lines. Although there is a discursive disapproval for the dependent or bogus civil law employment in the health care and its side effect in a form of the intensification of work, the sectoral unions lack a coherent strategy to deal with such a problem, especially with regards to organizing precarious workers in the sector.

## **7. Metal sector. Steelworks.**

### **7.1. A brief characteristics of the sectors' economic position and employment trends**

At present the steelworks production in Poland is consolidated in the hands of four foreign and two Polish holdings, among which the largest share (circa 70 per cent of the market) belongs to Indian-owned multinational corporation ArcelorMittal Poland (AMP), (Szulc et al. 2011). The company owns five biggest steelworks in the country employing (as estimated by one of our interviewees) circa 15 000 workers (**I5**). Other foreign-owned steelworks companies in Poland include: BGH (German capital), Celsa (Spanish capital), and CMC (United States). The two Polish-capital holdings – Alchemia and Cognor – own altogether four other steelworks and their accompanying production in Poland. In 2013 the gross value added of metal production constituted of 0,51 per cent of the total gross value added (7509,2 billion zł), and 2,85 per cent of the gross value added of manufacturing (RS Przemysłu 2014).

The steelworks production in Poland had been drastically reduced throughout the second half of 1990s as the result of Polish transition from the state socialism to capitalism, which brought about the collapse of state owned heavy industry. Back then the employment dropped from the level of 147 thousand in 1990 (Trappmann 2015: 359) through 130 thousand in 1995 to nearly 48 thousand in 2000, and it has been decreasing (with fluctuations) ever since (Szulc et al. 2011). The shape of present steelworks production in Poland results mainly from the Governmental Programme of Restructuring of the Iron and Steel Industry (elaborated in 1998 and modified in 2001-2002), and the Programme “Restructuring and Development of the Iron and Steel Industry for 2003-2006”. Both programmes resulted from the conditions of the Poland’s accession to the European Union. The 2003 Programme was carried out between 2003 and 2006 and embraced eight enterprises, including a newly established the Polish Steelworks holding, Polskie Huty Stali [PHS]) which consisted of largest steelworks in Poland (Katowice, Sendzimira, Florian, Cedler). It led to the further reduction of the workforce by 22,4 per cent (from 19 662 thousand in 2003 to 15 251 in 2006) and drop in the amount of produced steel and increase of the productivity by 44,6 per cent (from 222 to 321 tons per one employee, Szulc et al. 2011: 48). The Programme implied the privatization of PHS and other Polish steelworks driven mainly by the foreign capital. In 2002 the Indian steel maker – Mittal Steel entered the Polish market. In 2004, it bought 75 per cent of the PHS shares taking over the equipment, the buildings and the workforce and becoming the main steel producer in Poland. In 2006, following the fusion with Western European company Arcelor, it was transformed into ArcelorMittal, and in the Polish case, ArcelorMittal Poland (AMP).

When asked about the roots of the present situation of the steelworks labour market, all our interviewees consistently point to the year 2004 and signing the EU Accession Treaty (Protocol no. 8) which implied the reduction of the labour force in the PHS (since 2004, Mittal Poland) to the level of 10411 employees (PAP, 2007). The latter regulation reflected the outcomes of lobbying by the EU15 steel lobby aimed at avoiding low-price competition with the Central and Eastern European steel producers (Trappmann 2015: 358). The privatization and downsizing of steel plants, as well as restrictions of state aid for the sector (allowed transitionally until 2006), in accordance with the European Steel Aid Code, became conditions of the Poland’s accession to the EU (Trappmann 2011b: 12). The structure of employment in the sector started to change in the result of labour shortages created by the mass, mostly voluntary redundancy programmes carried out during the second half of 2000s. According to our interviewees, to fill the gap in the staff, as those who opted for voluntary discharge could not be re-hired, the companies, mainly the AMP, began to use the services of temporary work agencies and outsourcing companies.



The second wave of structural changes among the AMP's workforce came along with the global financial crisis of 2007+ and the recession in steelworks production. Increasing international competition (especially with China), permanent overcapacity of the EU steel sector, shrinking demand in steel-consuming industries (construction, automotive sector), raising and highly fluctuating prices of raw materials, as well as side effects of environmental and energy policies (in particular in the EU) are some of the crucial factors which had an impact on the restructuring in the steelwork sector in the wake of the crisis (Trappmann 2015). In 2009 the AMP reduced its global production by 1/3, the same as it did with its budget for the investments (Toporowski, 2015). In Poland the situation resulted in the reduction of AMP's workforce by 27 per cent, from 23 710 employed in 2008 to 17 135 employed in 2011 (Teissier, 2012). The contraction of workforce in the Polish production sites was also linked to the termination of the social package negotiated by trade unions with the AMP in 2003 which protected employment levels until 2009. As noted by Trappmann (ibidem: 363), "immediately after the deal expired, Mittal initiated a voluntary departure programme and replaced core workers by agency workers."

**Table 9. Employment in steelworks production in Poland**

	2008	2009	2010	2011	2012	2013	2014
Employed persons (Eurostat)*	25,7	23,2	24,1	22,9	23,8	22,3	21,2
Employment (other sources)**	35,7	32,6	31,8	Nd	nd	25 000 (estimated)	nd

Source: \*) Eurostat, Annual detailed enterprise statistics for industry, Section C241: Manufacture of basic iron and steel and of ferro-alloys; \*\*) Employment in steelworks industry, the years 2008-2010: Szulc, Grabarz, Paduch, 2011, the year 2013: Dzienniak, Zagórska, 2014; the authors do not present the methodology for calculating employment.

**Table 10. Basic employment trends in the manufacture of basic metal, in thousand (2008-2014)**

Year	2008	2009	2010	2011	2012	2013	2014
Employment (GUS) <sup>1</sup>	71,4	59	59,1	64,6	63,1	61,2	62,2
Employment (Eurostat) <sup>2</sup>	101,4	115,7	96,4	102,0	103,5	96,5	95,0
Employment in public sector GUS	7,03	4,81	4,53	4,79	3,61	1,40	0,72
Employment in private sector GUS	64,4	54,2	54,6	59,8	59,5	59,8	61,5

Source: (1) GUS, Statistical Yearbooks; (2) Eurostat Labour Force Survey (Note: Age 15-64); Section C24.

The drastic decrease in the amount of labour force between 2008 and 2009 is visible in the data derived from Eurostat (table 10). The employment in the section C24 ("Manufacture of basic iron and steel and of ferro-alloys") dropped by 2,5 thousand in that period. It is even more pronounced in the case of data derived from the German Steel Federation (quoted by Trappmann 2015: 362) which document a drop in employment from 29 340 in 2008 to 22 770 in 2012. The same trend can be observed for the section Manufacture of basic metals (table 10) in which employment decreased by 12,4 thousand between 2008 and 2009 (mainly in the private sector – by 10,2 thousand). After that period, between 2010 and 2011 the opposite tendency emerged and the employment grew significantly (according to GUS by 5,5 thousand and according to Eurostat by 5,6 thousand, see table 10) which could be related to overall better economic situation of the sector (after the drop in gross output of the manufacturing of basic metal between 2008 and 2009, the production increased in 2010<sup>27</sup>).

<sup>27</sup> The gross output of industry for the section Manufacture of basic metal amounted (in 2008) 28473,2 billion PLN, in

## 7.2 Common forms of precarious work

Our interviewees point to three most important and intertwined forms of the precarisation of work in the steelworks industry, namely: **outsourcing, high wage differentials and flexibilisation of the working time**. As estimated by the leader of the National Section of Steelworks (KSH) of NSZZ Solidarność, up to 30 per cent of the workforce (depending of the season of the year and the period of time) is employed on flexible, unstable conditions – working for outsourcing companies subcontracted by the main steel producers (I4). Other unionist from AMP confirm that information stating that it was a deliberate strategy of the company: *“In some periods there were 1200 of such workers [outsourced], today they [AMP management] give us the information that there is 660 of them. The fluctuation is very high”* (I6). The unionist relate this strategy to the features of the Programme of Steelworks Restructuring, especially the changes triggered in 2004: *“We needed to be up to speed with the Steelworks Social Package<sup>28</sup> especially with the process of employment reduction and the labour shortages started back then, there were too little people to keep the production lines. And they found the way to bypass that, that is the flexible forms of employment. And that was the moment when they started to emerge. And the employer noticed that by this mean they can reduce costs”* (I5). According to our interviewees this trend accelerated after 2009 after the mass layoffs due to the global financial crisis which affected AMP. Another reason was the end of the “social package” in the AMP 2009..

The laid-off workers could not be re-hired (the regulations in steelworks restructuring programmes forbade this practice) and the company started to recruit people almost only through outsourcing companies. It is important to understand why in the steelworks industry there is a practice of workforce outsourcing rather than leasing it from the Temporary Work Agencies. In the three researched case studies (two AMP's location and one owned by a Polish holding) this seems to be the main problem concerning atypical employment. Since the work on the production in the steelworks sector is defined as dangerous by the Polish law, it is not possible to directly employ production workers through TWAs<sup>29</sup>. Other reason for this were the mass layoffs, according to Polish regulation on group layoffs, the employer in that situation could not hire employees via TWAs (until changes in 2009). Yet another cause for outsourcing is the steelworks policy for cost reduction. Given the regulations on TWAs, the temporary agency workers have to have the same wages as the regular workforce, and in the steelworks they are relatively high. According to GUS in 2013 (RS GUS 2014: 271-272) the average monthly wage in manufacture of basic metal amounted to 4096,86 PLN (above the national average: 3659,40 PLN). As stated by one of our interviewee: *“In steelworks the average wage constitutes of 4 up to 6 thousand PLN, but only for those employed directly”* (I4). Thus, as a result, the steel producers use the services of subcontracted companies which outsource (or as the unionist call it “lease”) the workforce.

As described by one of the unionist in AMP, the procedure is supported by the major TWAs in the country which establish their branches that do not have the legal status of TWA (I5). Interestingly enough, as stated by the same unionist, some outsourcing companies operating in steelworks industry have the status of temporary work agency but still they do not employ workers on the basis of TWAs regulations. This manoeuvre facilitates to omit the regulations of TWAs and employ (through outsourcing) the workers on more flexible conditions with lower wages. Such a workforce, during the production downtimes, can be easily reduced and it is also characterised as having lower level of skills and qualifications than the regular workers.

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2009, 27718,9 billion PLN, and in 2010, 36474,5 billion PLN (RS Przemysłu 2012).

<sup>28</sup> The Steelworks Social Package (1999-2003) was a part of the Polish Program of Steelworks Restructuring negotiated by trade unions. It provided generous severance payments for laid-off workers. It was followed by Steel Industry Revitalisation Package (2004-2006). Both schemes aimed at enabling faster and more socially acceptable reductions of workforce. The term “social package” also applies to an agreement reached by the AMP unions with Mittal in 2003-2004 which guaranteed employment level in the company until 2009 (except for voluntary redundancy schemes).

<sup>29</sup> Article 8 of the Act on Employment of Temporary Workers forbids the use of TWA in the case of “particularly dangerous jobs”

The roots of outsourcing practices in the industry are not only related to the process of labour force reduction. The unionists also link it with something that they call “a terror of ‘one-off’ production”: „There is an indicator which is substantial for the AMP, to which everything has to relate, that is productivity. It points to the amount of produced steel per worker employed [...] The higher the indicator is, the bigger are the investments, the development. The management compares the indicators and aims at keeping the employment at the lowest level. This indicator does not take into account the all [subcontracted – AM] companies as they are [in the industry - AM] and their level of employment is not taken into account in relation to productivity, [they count - AM] only the workers within a direct production process [i.e., directly employed]” (I6). They further discuss the link between outsourcing and the fluctuation of the production: “It results, [the outsourcing - AM], from the “one-off” type of production (produkcja akcyjna), for example when there is sudden demand for production. Afterwards, the production drastically drops because there are no orders. In that case such [outsourced] workers work for 8 to 10 days and next, they have 4 to 6 days off. We notice the National Labour Inspectorate about that, this is the terror of “one-off” production” (I6). Thus the workforce outsourcing coupled with the fluctuation of the production also evokes flexibilisation of the working time, which increases precarisation, as during downtimes the outsourced workforce is not being paid. As explained by Trappmann (2015: 368), shortening the duration of production orders also intensified as result of the 2007+ crisis: “For workers, this has meant work intensification in peak times and greater job insecurity at times when orders are lower.”

Outsourcing and flexibilisation of the working time is also inherently related with the level of wages and health and safety regulations. The unionist claim that the practices of outsourcing create huge wage disproportions (reaching up to 50 per cent) between those employed directly and through outsourcing companies, even between workers performing the same tasks (I5). The low wage outsourced labour force is also poorly qualified as for the employment in steelworks, although they often perform the same work. Low level of skills and experience is thus linked with increasing violations of the health and safety regulations and the accidents at work: “The conditions of health and safety is a mess. The statistics point that the bulk of accidents takes place among employees from these [outsourcing] companies” (I5).

When asked about the self-employment in the industry, our interviewees did not recognize it as a vital problem. However, taking under consideration other companies cooperating with steelworks, they noticed that it might be an issue. They connected the practices of self-employment in the industry with relatively high fragmentation of the part of the market providing the services for steelworks. Some services such as transportation, logistics and reparations – which used to be an internal part of the steelworks – are now subcontracted to other smaller companies which hire workers on self-employment for particular tasks (I6). The critical attitude of steelwork unionists regarding self-employment of workers might be seen itself as something relatively new. As observed by Trappmann (2011b: 14), in the mid 2000s, unionists in steelworks used to advice ex-workers to become self-employed and even organized courses on “How to start your own business”.

**Table 11. Labour contracts, part-time employment and self-employment in Manufacture of basic metals as the per cent of the total employment**

	2008	2009	2010	2011	2012	2013	2014
Share of employees hired on the basis of labour contracts in total employment (%) GUS	89,0	90,4	90,7	90,9	92,5	95,9	97,0
Share of part-time employees in total employment (%) GUS	1,1	3,2	1,3	1,2	1,4	1,6	1,7
Share of self-employment (employers+ own account workers) (%) GUS	1,1	1,4	nd	1,7	1,7	1,8	1,8
Share of employees in persons employed (%) Eurostat	98,3	98	97,8	97,8	97,7	97,6	nd

Source: (1) GUS, Statistical Yearbooks; (2) Eurostat, Annual detailed enterprise statistics for industry, Notes: Age 15-64, Section C24 (Manufacture of basic metals), Nace R2.

**Table 12. Dimensions of precariousness in the metal sector - steelworks industry**

		Quality of working conditions dimension					
	Regulated by:		Wages	Working time	Job security	Social security	Representation (voice)
The formal employment status dimension	Labour Code	FT open-ended contract	No regulation at the sectoral level, minimum wage set by law	Regulated by Labour Code Very flexible in the case of outsourced workers (work on demand)	Dismissal periods guaranteed by Labour Code	Regulated by Labour Code setting a standard	Worker organisation unionising ca. 50% of the workforce directly employed in the steelworks, limited in the case of outsourced workers
		Fixed-term contract	Relatively high level, but huge wage differentials (up to 1000 PLN) between old and newly employed due to the lack of sectoral minimum basic wage Low level of wages of the outsourced workers		Dismissal periods guaranteed by Labour Code - until February 2016 much shorter than in FT OE contracts.		
		Part-time contract			Dismissal periods guaranteed by Labour Code	Lower contributions due to the nature of contracts	
		TAW			The scope of the usage of temporary work agencies in the sector is very limited since the majority of jobs carried out in steelworks are defined as “dangerous jobs” which cannot be performed by TAWs. As a result, TAWs are replaced by subcontracting companies which often perform similar functions but which are not regulated by the Act on TWAs.		
	Non Labour Code	Self-employment, bogus self-employment	The scope of self-employment in the sector is very limited, mainly present in companies which provide services for steelworks (transportation, logistics and repair)				
		Civil law contracts	No regulation by Labour Code or other regulations	Not regulated	No job security, high rotation - relatively low incidence	No social security contributions in case of specific task contracts; obligatory contributions (with exceptions) in case of freelance contracts	No union organisation

Looking at other dimensions of the precarisation of work, there is basically no data on temporary employment, as it is aggregated for the whole industry (in case of GUS) or aggregated for the manufacturing section. The existing statistics for the section: Manufacture of basic metal provided by GUS point to: high level of labour contracts (97 per cent in 2014), low level of part time employees (1,7 per cent in 2014) and low level of self-employment (1,8 per cent in 2014). One reason for such great discrepancies between the statements of our interviewees and existing data could be that the outsourcing companies are not calculated as a part of the steelworks or basic metal production.

Until the late 2000s, the steelwork sector in Poland has presented one of the rare examples of relatively well developed sectoral social dialogue at the tripartite and bi-partite level. The supra-company collective agreement for steel industry employees has been in force in 1996-2009 guaranteeing entitlements and bonuses better than those included into the Labour Code, as well as extra rights for trade unions, securing their influence over restructuring (Gilejko 2011: 71). At the tripartite level, the Tripartite Sectoral Team for Social Conditions of Restructuring in Steel Industry has been created already in 1995, consisting of an employer organisation (the Association of Steel Industry Employers, ZPPH), representative trade unions and government representatives (Gilejko 2011). It should be mentioned that the entire restructuring phase was marked by cyclic trade union protests (ibidem: 72). The result of the combination of social dialogue and protests was the negotiation of tripartite agreements aimed at worker interests protection during the restructuring process, including the Agreement Concerning Social Protection Instruments in Restructuring (“Steelworkers Social Package”) (1999), consisting mostly of passive labour market policy instruments (early retirements, unconditional, high severance payments etc.) and the Steel Industry Revitalisation Package (2003) based predominantly on active instruments (e.g. retraining of former steelworkers, support for starting business activities etc.) (ibidem; Trappmann 2011b: 11). In addition, during the privatisation of the Polish Steelworks Holding in 2003-2004, trade unions reached an agreement with the Mittal (a “social package”) which guaranteed employment protection until 2009 and some additional entitlements, including pay increases, guaranteed employee representation in the supervisory board of the company and others (Trappmann 2011b: 13).

However, at the present moment (2015), all of the previous union achievements at the sectoral level seem to be gone. The industrial relations in the steelworks are characterized by rather non-existing social dialogue on the sectoral level but quite vivid collective bargaining on the company level – according to one of our interviewees nearly half of the labour force in the sector is unionised (I4). The main reason for this is the lack of proper governmental representation (there is no department dealing with steelworks production) and low organisational power of the employers' organisation (The Association of Steel Industry Employers, ZPPH) as they do not include all major holdings, such as CMC and Celsa (I4). The roots of ceasing of the sectoral collective bargaining in steelworks reach the year 2009 when one of the unions did not sign the agreement which has already been accepted by the employers' organization. The following efforts to get back to the negotiation table failed because the AMP refused to participate and, as mentioned earlier, other two main holdings (CMC and Celsa) gave up their affiliation. At the same time the unions in the AMP managed to sign the company level agreement embracing five AMP's locations. At present there is no supra-company collective agreement. In the recent years there were efforts to sign new sectoral collective agreement (or, in the Polish legal terms, supra-company) but they failed.

### 7.3. Union actions to tackle precarious work

Although there is no common sectoral strategy to tackle the development of precarious employment, unions approach towards its forms in the steelworks industry seems to be very

consistent and coherent, however focused on company-level activities. On both discursive and practical level their attitude toward precarious workers, especially the outsourced workforce, can be characterised as **inclusive**. As one of the unionists from AMP in Kraków stated: *“We [the union] act to provide good health and safety conditions and social benefits, like coupons, bonuses, Multisport cards for them [outsourced workers]. We also try to fight for their wages. We treat them as ours and we want to equalise their wages with the wages of regular workers. In most cases we manage to force the employer to provide social benefits for them”* (I6). Thus, the unions in particular locations undertake actions to protect, enforce or strengthen the rights of such workers in the sector, especially on the ground of organising and representing their interest, as well as solving the individual grievances.

In some cases unions actions brought about **reduction** of the outsourced workers through creating a pressure on the employer to transfer them to the core workforce. In the effect the company did so: *“Recently we managed to transfer 400 workers from the outsourcing company to the AMP, between 2013 and 2014 they got employed directly by AMP. And we keep on fighting. - How? [AM, MM] - By informal actions, our power and pressure. We used the arguments that this form of employment has very negative effects on health and safety results as well as production. We consistently say that it [the outsourcing] creates a serious threat to the production. If those workers would go away, the production would stop. They are employed on strategic posts [...] And we asked the employer: 'Do you realise this?'”* (I5). As it could be interpreted, this quite militant attitude overlaps with actions which bring changes. However, what can be understood from the interviews, the reduction of the outsourced workforce is not an ultimate goal, the aim here is rather **elimination** of this form of atypical employment. The tactic is embedded in the idea to make a use of the regulations on TWAs: *“I have been in a dispute with the employer ever since it [the outsourcing] happened to appear in our company. I argue that they are not subcontractors [outsourced workers] but temporary agency workers”* (I5). Thus, as mentioned earlier, if employers agreed to recognise such workers as having the same status as those employed by TWAs, they would have to increase their wages to the level of regular employees. Looking at the cost reduction policies in steelworks, this solution could bring a complete resignation from either outsourcing or employing via TWAs.

The main tools used by unions to tackle precarious employment in the industry are connected with the specific structures of their organizations. The unions managed to establish and develop the inter-company union organizations (Międzyzakładowe Organizacje Związkowe – MOZ). Firstly it happened in response to restructuring, after the merger of several steelworks under one umbrella employer – as in the case of AMP and Alchemia holding – the individual company level organizations of NSZZ Solidarność also merged within the MOZ. In the aftermath, this structural change brought about more bargaining power and kept the integration of workers’ demands as well as consolidated the attitude of different committees towards precarious employment.

The other type of union organization is the MOZ with TWAs and with outsourcing companies (belonging and not belonging to TWAs) in one of the ArcelorMittal locations - Dąbrowa Górnicza. The success of organising the outsourced workers relies on the relations between core and outsourced workforce. As declared by the unionist from Dąbrowa Górnicza: *“We are the only union organisation in AMP which embraces those [outsourcing] companies, we have our members there. The bulk of their employees is made by the children of past and present employees [of AMP] and they know that the unions are active here. And they approached us and we faced that challenge to embrace those companies. We [the union] exist in two of such companies and those companies also questioned our legitimacy”* (I5). He also stated that the union density in these companies varies from 20 up to 30 per cent. One of the major success of the union organisation was the already mentioned transfer of the outsourced



workers to AMP, another achievement is that they forced one of the outsourcing companies to provide for their workers a Social Fund. The generational link as well as the familial links between core and outsourced workers creates the basic grounds for solidarity. When asked about other examples of good practices, one of the unionist said: *“The fact that we exist in those [outsourcing] companies and that we act to equalise the working and payment conditions in those companies with ours. Because only then the use of such employment would not pay off for the employer. The protection of the interest of employees of such companies is of interest for the regular employees. This is a strategy to discourage the AMP from using such companies”* (I5). The union organisation in Dąbrowa Górnicza also tries to track down the mistakes in the calculation of working time and wages and notice the National Labour Inspectorate about them, and aims at covering the outsourced workers with the AMP's collective agreement regulations.

In the context of good practices to tackle precarious employment, the other union present in the AMP (Independent Self-Governing Trade Union of the ArcelorMittal Poland Employees, NSZZ Pracowników AMP), provides the outsourced workers with some benefits from the AMP's Social Fund (by signing additional agreements with the employer). The union also tries to: *“force the AMP to directly hire workers from the leasing [outsourcing] companies”* (I6), and to protect the core workforce against the negative effect of outsourcing. As they claimed: *“We want to set a minimum basic wage for the newly hired employees. It would however cover only directly employed not the leased [outsourced] ones [...] It would stop the deepening of wage differentials because each time when there is a pay rise, an employee would start from a different level (...) Since 2009 we have a stalemate in wage negotiations, also in terms of significant pay rise. At present, on the same posts there could be even 1000 PLN difference in basic wage, and this is a pathology”* (I6).

Unfortunately, the approaches of employers in the sector cannot be discussed in detail due to refusal to be interviewed by the main employer organisation, The Association of Steel Industry Employers (Związek Pracodawców Przemysłu Hutniczego w Polsce). In the letter to the PRECARIR team dated as of 4 May 2015, the Head of the Office of the Association stated that in the sector of iron and steel production *“the problems of concluding employment contracts are regulated by the company-level collective agreements”*. They also added that *“due to low level of economic development and related with it production level of smelting products, the problem of the development of flexible employment forms does not exist in the steelwork sector”*. They also stressed that due to the protracted reforms of tripartite social dialogue institutions, the *“Association does not undertake independent actions regarding flexible employment forms”*. They concluded that they *“do not want to express their opinions about problems which concern their sector to a very limited extent”*. Taken verbally, the above quoted employers' statement can be interpreted in terms of the acceptance of **status quo** in the sector combined with the denial of the expansion of precarious employment. At the same time, based on the interviews with unionists [I5, I6], we can conclude that the expansion of flexible employment has been for the recent decade an explicit target of steelwork companies. For instance, as stated by our informants from the AMP [I5], in 2006/2007, the decision was made at the global corporate management level of the Arcelor Mittal to reach the target of 30 per cent of the flexible (external) employees in the MNC subsidiaries.

## 7.4. Conclusion

The steelwork sector presents a peculiar case of the metal sector in Poland due to its long-term traditions of trade unions' involvement in sectoral social dialogue, relatively strong structural (workplace) bargaining power of workers, its sensitivity to global competition and very strong impact of the conditionality of the Poland's accession to the European Union on



the employment levels and forms in the sector. The expansion of precarious employment over the recent decade concerned mostly the emergence of outsourcing companies (performing to some extent the role of temporary work agencies), high wage differentials between internal and external workforce, and flexibilisation of the working time. At the present moment, the sectoral social dialogue in the iron and steel industry is in a stalemate following the privatisation of the Polish steelworks and the termination of sectoral-level collective agreement in 2009. As a result, the most of trade union actions to tackle the problems of precarious workers are carried out at the company and inter-company level. Their tangible effects include, among other things, the unionisation of workers in subcontractors' companies, influence on wages and working conditions of outsourced workers, as well as successful attempts to transfer the latter into internal labour markets of steelworks. On the employers' side, we can observe the combination of the **status quo** and **expansion approaches** regarding the problems of flexible employment.

## 8. Construction sector

### 8.1. A brief characteristics of the sectors' economic position and employment trends

In the mid-2000s construction in Poland was affected by labour shortages following the mass migration abroad of skilled construction workers as well as the gap in the training system as a result of the closures of vocational schools. However, soon after the sector noted an accelerated growth as a consequence of the wave of the investments related to the 2012 UEFA European Championship and the use of European funds for large infrastructural projects. It has been considered "the fastest growing industry in the country" (Information..., 2013). It contributed to 6,0 per cent of the GDP in 2005, 6,9 per cent in 2013 and 6,6 per cent in 2014 (RS GUS 2014). Following the peak of investments and employment in 2011, in terms of turnover, a slowdown in the sector was observed in 2012-13 and, next, some recovery in 2014.

**Table 13. Basic employment trends in the construction sector, in thousand (2008-2014)**

Year	2008	2009	2010	2011	2012	2013	2014
Employment (GUS) <sup>1</sup>	824	882,7	865,2	909,2	867,0	810	820
Employment (Eurostat) <sup>2</sup>	1228	1303	1248	1270	1246	1176	1174

Source: (1) GUS, Statistical Yearbooks; (2) Eurostat Labour Force Survey (Note: Age 18-64);

The sector is dominated by the domestic private capital: in 2014, 82,9 per cent of the production in the construction sector was sold by the private Polish capital as compared to 15,2 per cent in case of foreign capital and 1,5 per cent by the public sector firms (RS GUS 2015: 523). According to the data of Central Statistical Office of Poland, based on company reporting, the employment in the construction sector grew from 882 thousand in 2009 to 909 thousand in 2011 and next declined to 810 thousand in 2013 and slightly grew to 820 thousand in 2014<sup>30</sup>. The same data for Eurostat present similar overall trends, but figures are higher since they are based on labour force surveys which also cover, among other things, unregistered forms of employment. Notably, the difference between both statistics in 2014 overlaps with what we know about the scope of unregistered employment in construction

<sup>30</sup> It has to be noted that one of our informants mentioned the figure of 500,000 (KSBiPD NSZZ Solidarność, Z. Majrzechak).

from interviews carried out for the sake of the project (around 30 per cent of the total employment, I8, I9).

The sector is dominated by micro and small companies. In 2014, 65,9 per cent of companies in construction sector employed less than 50 people; only 44 companies employed more than 500 workers. However, the actual share of small and micro-companies is much higher as the available statistics cover only companies employing more than 9 people (RS GUS 2015: 525). Construction is dominated by men (women share in employment amounted to 7 per cent in 2014). Around one fourth of the sector's workforce is self-employed.

## 8.2. Common forms of precarious work

Precarious employment in the sector is mostly related to **a long chain of subcontracting** which contributes to highly diversified employment standards and diffusion of responsibility. Another aspect of precarisation is **unregistered employment** as well as **hybrid employment** in which a part of salary is paid under the table. Although some of the sectoral problems are universal, there is the link between economic slowdown and precarisation. As suggested by the leader of the KSBiPD NSZZ Solidarność (I9), an intensified competition among subcontractors led to offering services below their market price which in turn resulted in bankruptcies of some companies and lowering employment standards in others.

In total, paid employees with the Labour Code employment contracts accounted for 76 per cent of the total employment in the sector in 2014 (as compared to 79,3 per cent in 2008) (GUS 2015d). There is a rather insignificant share of part-time employment in the total employment (less than 4 per cent) and high, slightly increasing share of temporary employees (39,9 per cent in 2008, 41,1 per cent in 2014). Self-employment accounted for 22,2 per cent of employment in 2014 and kept on growing since 2008 (when it was 19,5 per cent); some 13,6 per cent of employment is constituted by own-account self-employed, many of whom might be considered bogus self-employed (*"Labour force is recruited from outside large cities, it is employed "in the black economy", there are no agencies, but whole chain of subcontractors and at the end of this "food chain" no single penny is given (...) Or there is semi self-employment, when guys band together to work in construction. And they are quasi-company. But what kind of company are they? Because they have a drilling machine?"* (I19, Workers' Initiative). A significant increase in the share of own account workers in the sector was observed between 2008 (10,9 per cent) and 2014 (13,6 per cent).

According to the vice-president of the Polish Association of Construction Employers (I9), the most precarious conditions are offered by smaller, subcontracting companies. However, it is not a general trend and situation is diversified by regions, construction sites and types of skills needed. It is not uncommon that small outsourcing companies providing required type of skilled workers for construction sites pay better than larger firms (I7)

**Table 14. Temporary employment, part-time employment and self-employment in construction sector as the per cent of the total employment**

	2008	2009	2010	2011	2012	2013	2014
Share of temporary employees in total employment (%)	39,9	38,7	39,4	39,7	38,9	39,0	41,1
Share of part-time employees in total employment (%)	4,2	4,0	4,3	4,6	4,4	4,2	3,9
Share of self-employment (own account workers) (%)	10,9	12,0	13,4	13,1	14,0	14,5	13,6
Share of self-employment (total) (%)	19,5	20,8	22,4	21,4	21,8	23,0	22,2

Source: Eurostat Labour Force Survey, Notes: Age 18-64, Section F (Construction), Nace R2

Construction is one of the sectors in which an illicit work is common. For instance, in 2010, renovations and repairs were carried out by 16,8 per cent of those who admitted to work without contracts (GUS 2011). According to the European Federation of Building and Woodworkers (EFBWW, *no date*) report, up to 30 per cent of workers in construction might work without contract. And, as mentioned earlier, a similar figure was confirmed by the interviewed representatives of unions and employer organisations in the sector (I7, I8, I9)

The scope of civil law employment (freelance contract and specific-task contract)<sup>31</sup> in the sector reached nearly 39 thousand workers in 2014 (4,8 per cent in the total employment in the sector) (GUS 2015d); it kept on declining as compared to 2012 (nearly 52 thousand) and 2013 (above 51 thousand) (no earlier data available).

Due to legal restrictions included in the Act on Employment of Temporary Workers which prohibits temporary agency work in the jobs considered “particularly dangerous” (in practice, a large part of jobs in construction falls into this category because it is considered work at heights), the share of workers in construction sector employed through temporary work agencies is low (only 1053 persons employed by TWAs as of December 2014, GUS 2015d). However, the representatives of employer organisations (I7) suggested that outsourcing and subcontracting is common in the sector, especially in the case of lower skilled jobs. The outsourcing practices were said to stem from the practice of shifting responsibility for work discipline of the workforce to external companies.

The sector is very diversified in terms of wages: 30 per cent of its employees earned less than national minimum wage (in 2014, GUS 2015b) and 33 per cent were classified as low wage earners in 2010 (Eurostat). The average wage in the sector (2884 PLN) in 2011 amounted to around 85 per cent of average wages in the national economy (RSP GUS 2014). However, it was noted in the interviews that it is a common practice to pay only a part of wage in the sector as an “official wage”, while the rest is paid under the table (“envelope wages”) which again points to the role of unregistered employment and income. It is a common practice to pay a part of salary “under the table”, especially for work on Saturdays (I9).

The working time in the construction sector is generally described as irregular, first of all due to a common practice of extending working time with extra hours on demand, in the peak of construction works, secondly because of the scope of self-employment and unregistered employment in the case of which working time regulations do not apply. It is confirmed by statistical data: in 2012, the share of those who worked longer than 50 hours per week was the highest in construction sector and amounted to 26,9 per cent of the employed (RSP GUS 2014). The leader of KSBiPD NSZZ Solidarność (I9) indicated as other sources of precarisation “bad work organisation” (which leads to intensified work close to deadlines, but also to limited awareness of working conditions at the end of subcontracting chain), unstable prices of building materials, as well as low wages which force workers to take a lot of overtime (I9). An important aspect of precarious work is constant commuting which negatively affects family life, and basically extends the time devoted to waged work.

One of the key elements of precarisation are also the conditions of public tenders in which the price of services is still the key factor<sup>32</sup> (*“If a company wins a tender offering prices [of labour - AM] in the case of which a project is impossible to carry out, a subcontractor cannot cope with it and offer better wages and working conditions either”* (I9). A similar observation stems from the KPMG report on the construction sector in Poland

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<sup>31</sup> GUS defines freelance contract and specific-task contract as: „People with whom (from 1 January to 31 December) the mandate contract or contract of specified work was concluded and who are not employed at the basis of employment contract.”

<sup>32</sup> Despite legal changes in the Public Procurement Act enacted in 2014 which limited the relevance of price as the main criterion for choosing the offer in the public procurement procedure.

(KPMG 2014). In 2014, 89 per cent of construction companies studied used public procurements as the main way of acquiring a contract. At the same time, their management suggested that the main problems of public procurement procedures is taking the price as the deciding factors by contracting public institutions, long procedures and limited number of public tenders. Both in the KPMG report (idem) and in our interviews (**I7**), unstable law and lack of state strategy for construction sector, low prices in the case public and private contracts and belated payments by contracting partners are seen as the main reasons for financial instability of companies in the sector. According to our informants (**I7**, **I9**), it translates directly and indirectly to the instability of employment conditions.

The specificity of employment relations in the sector adds to the above-mentioned sources of precarisation. Construction sector in Poland is a low unionised sector; union density in 2013 amounted to 3 per cent of employees. Two largest trade unions in the sector are the Budowlani Trade Union (ZZ “Budowlani”) and the National Secretariat of Construction and Wood Industry of NSZZ Solidarność (KSBiPD NSZZ Solidarność). There are various employer organisations in the sector, including the Polish Association of Construction Employers (PZPB), the Confederation of Construction and Real Estate (KBiN)<sup>33</sup>, the Polish Association of Developers’ Companies (PZFD) and the Employer Association of Building Materials Producers.

Sectoral collective bargaining in the construction is weak (EFBWW, p. 54). Despite a draft of sectoral level collective agreement (from 2004) elaborated by NSZZ Solidarność and “Budowlani” Trade Union and submitted via Tripartite Team on Construction and Public Utilities, no sectoral level collective agreement has been signed in the sector. Among the reasons mentioned by employer organisations’ representatives, the weakness and limited representativeness of trade unions were mentioned (**I8**). Similar arguments were made by trade unions who referred to the limited representativeness of employer organisations (**I9**). In addition, limited support of the state for bi-partite social dialogue was also mentioned (**I8**). Nevertheless, there is a practice of regular bi-partite meetings and debates which also translates into joint initiatives to tackle the problems of precarious workers (see 3.3).

Company level collective agreements in the construction are rare; according to the EFBWW (p. 55) report, there were 24-30 company collective agreements (in 2009-2010) in large, interregional building companies in Poland which regulated the issues of wages, working time and sometimes performance-based wages, better travel allowances, Christmas bonuses (ibidem p. 56). There was also a Tripartite Team on Construction and Public Utilities by the Tripartite Commission on Social and Economic Affairs in which the problems of labour market and work ethic in construction were discussed. It is currently in the reconstruction as a part of the Social Dialogue Council following the crisis of the Tripartite Commission in Poland in 2013-2015.

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<sup>33</sup> A successor of Federacja Pracodawców i Przedsiębiorców Przemysłu Budowlanego RP

**Table 15. Dimensions of precariousness in the construction sector**

		Quality of working conditions dimension					
	Regulated by:		Wages	Working time	Job security	Social security	Representation (voice)
The formal employment status dimension	Labour Code	FT open-ended contract	No regulation at the sectoral level, minimum wage set by law	Regulated by Labour Code, but common practice of extending working time (extra hours on demand, envelope wages)	Dismissal periods guaranteed by Labour Code	Regulated by Labour Code setting a standard	Limited worker organisation (mostly large companies)
		Fixed-term contract	Minimum estimate wages as a soft recommendation for all types of contracts		Dismissal periods guaranteed by Labour Code - until February 2016 much shorter than in FT OE contracts		Limited - unions unwilling to organise because union membership considered important reasons for non-extension of the contract)
		Part-time contract	Envelope wages for overtime		Dismissal periods guaranteed by Labour Code	Lower contributions due to the nature of contracts	Limited worker organisation (mostly limited to large hypermarkets)
		TAW	The scope of the usage of temporary work agencies in the sector is very limited since the majority of jobs carried out in construction are defined as “dangerous jobs” which cannot be performed by TAWs. As a result, TAWs are replaced by subcontracting companies which often perform similar functions but which are not regulated by the Act on TWAs.				
	Non Labour Code	Self-employment, bogus self-employment	No regulation by Labour Code or other regulations Minimum estimate wages as a soft recommendation	Not regulated	No job security	Usually minimum statutory contributions	No union organisation except for experiments (e.g. crane operators)
		Civil law contracts	No regulation by Labour Code or other regulations Minimum estimate wages as a soft recommendation	Not regulated	No job security, high rotation - relatively low incidence	No social security contributions in case of specific task contracts; obligatory contributions (with exceptions) in case of freelance contracts	No union organisation except for experiments (radical unions)
		Unregistered employment	Up to 30% of the sector; irregular wages	Not regulated	No job security	No social security	No representation

### 8.3. Union and employer actions to tackle precarious work

Trade union approaches towards precarious work in the sector can be labelled as the combination of **exclusion** and **elimination**. According to the KSBiPD NSZZ Solidarność president (**I9**), workers with “unstable” contracts are not union members and union itself prefers rather to protect standard employment contracts than to organise those with civil-law contracts. In general, the possibilities of union actions to protect the latter category of workers are seen as limited and therefore trade unions rather attempt to change their situation by legal actions at the national level.

In the case of employer organisations, we can talk about the approaches to precarious employment which combine **separation** and **reduction**. The responsibility for precarisation is offloaded from larger companies to subcontracting companies, even though the former do undertake some measures to limit its scope, especially in the case of public sector contractors. It has to be noted that the representativeness of both trade unions and employer organisations in the sector considered the existence of some level of flexible and even unregistered employment unavoidable in the sector (“*we will not eliminate it, we can just limit it, but it has to be done with respect for the interests of both parties*” (KBiN, **I8**)).

The most important collectively worked out response to the problems of precarious workers is an agreement on the minimum estimate wage in construction for construction and installation works and in the real estate management (*Porozumienie o minimalnej godzinowej stawce kalkulacyjnej w budownictwie dla robót budowlano – montażowych oraz w gospodarce nieruchomościami*). It was concluded in 2014 and renewed in 2015 (**I8**)<sup>34</sup>. The works on the agreement started in the mid 1990s (**I11**). It also existed in the early 2000s. However, it was abandoned. As explained by KSBiPD NSZZ Solidarność, one of the reasons was the allegation of monopolistic practices formulated towards signatory parties by the Office of Competition and Consumer Protection (**I9**). The current agreement has a form of a recommendation for employers in the sector (it has not a form of a sectoral or multi-employer collective agreement).

The signatory parties included **trade unions** (KSBiPD NSZZ Solidarność and ZZ Budowlani), **employer organisations** (PZPB, KBiN, the Polish Craft Association [*Związek Rzemiosła Polskiego*], the Concrete Producers’ Association [*Stowarzyszenie Producentów Betonów*]), as well as **other branch associations and organisations**, such as the Polish Gypsum Association [*Stowarzyszenie Polski Gips*], the Polish Association of Construction Engineers and Technicians (*Polski Związek Inżynierów i Techników Budownictwa*), the Institute of Construction Technique (*Instytut Techniki Budowlanej*), the Polish Chamber of Construction Engineers (*Polska Izba Inżynierów Budownictwa*), the All-Poland Chamber of Real Estate Management (*Ogólnopolska Izba Gospodarki Nieruchomościami*), the Polish Economic Chamber of Scaffolding (*Polska Izba Gospodarcza Rusztowań*). The minimum estimate wage includes all employer costs (14,83 PLN in 2015)<sup>35</sup> and takes into account elements such various holidays, sick leaves, obligatory medical check up costs, working clothes. It is considered by the representatives of both employer organisations (**I8**) and trade unions (**I9**) as a means to counter-act the practices of unequal competition by lowering employment costs by subcontractors. The agreement serves as a benchmark, but actual wages are higher (according to KSBiPD NSZZ Solidarność leader, an unskilled worker earns around 18-20 PLN per hour, skilled workers - between 30-40 PLN per hour **I9**).

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<sup>34</sup> Information at the website of ZZ Budowlani available at: [http://www.zzbudowlani.pl/index.php?page=wiecej&id\\_artykulu=2088&okno=0](http://www.zzbudowlani.pl/index.php?page=wiecej&id_artykulu=2088&okno=0) (accessed on 20 December 2015)

<sup>35</sup> The agreement is available at: [http://www.zzbudowlani.pl/UserFiles/File/stawka\\_kalkulacyjna\\_2015/Zalacznik\\_Stawki\\_minimalne\\_2015.pdf](http://www.zzbudowlani.pl/UserFiles/File/stawka_kalkulacyjna_2015/Zalacznik_Stawki_minimalne_2015.pdf), (accessed on 20 December 2015)



Another solution initiated by the Chief Labour Inspector and the Polish Association of Construction Engineers and Technicians (Polski Związek Inżynierów i Techników Budownictwa)<sup>36</sup> in 2011 and signed by ten largest, mostly multinational employers in the sector<sup>37</sup> is **the agreement on the health and safety conditions in construction** (“The agreement on safety” / “Porozumienie dla bezpieczeństwa”, <http://www.porozumieniedlabezpieczenia.pl/>). It has a form of a “soft” regulation by which signatory parties agree to use common models of Health and Safety documents (e.g. the standards of accidents’ reporting), the models of certifying occupational qualification of construction workers and periodic trainings. The motto of the campaign is “Zero accidents”. Although the signatory parties of agreements are companies, according to the leader of the KSiBiPD NSZZ Solidarność, company-level trade unions also took part in drafting it. Both Solidarność and Budowlani joined the programme and are listed as supporters of the agreement on its website along with employers’ organisations (PZPB)<sup>38</sup>. There is still a problem of “disciplining subcontractors” to stick to the agreement and some of the informants voiced their doubts in the actual level of the implementation of the agreement even by signatory parties, in particular due to the weakness of Labour Inspectorates and too limited sanctions for violation of the H&S regulations (**I8**). However, some large companies developed disciplining measures, e.g. making a further cooperation between general contractor and subcontractors conditional upon sticking to the agreed health and safety rules and sacking those who break the rules.

It has to be noted that employer organisations and trade unions in the construction sector were very active in lobbying for changes in the Public Procurement Act (**I9, I20**) and introduce non-price related criteria in the choice of contractors by public institutions. Their activities were partially successful. Following the changes which went into force in October 2014, the choice of offers in the public tenders is not any more dependent solely on the price criterion (except for commonly available services). In addition, under some conditions, including construction works, a contracting authority is given an opportunity to include in the tender a requirement for a contractor to employ workers with employment contracts<sup>39</sup>. Some other postulates, for instance trade union demand that contractors shall employ minimum 30 per cent of own workforce, were not implemented in the new regulations (**I9**).

Another form of bilateral cooperation involving ZZ Budowlani and Confederation of Construction and Real Estate (KBiN) is joint work on the codification of competences of various occupations in the construction sector (**I8**). The cooperation is undertaken within a joint, international, EU-funded project CertiVet aimed at developing an “an innovative educational e-package adjusted to the needs of different training forms, especially to nonformal and informal ways for improvement of VET trainers’ competencies” (<http://www.certivet.eu/>). One of the informants (**I8**) engaged in the project emphasised its potentially positive impact on the quality of work in the sector.

According to both the KSiBiPD NSZZ Solidarność president and the vice-president of the PZPB, **the role of the state** is crucial in counter-acting the precarisation, for instance by establishing uniform conditions for performing services based on the public procurements procedure (*“either everybody should work with freelance contracts or with employment contracts (...) In the public sector, some practices should be simply forbidden.”* - **I7**). Both KSiBiPD NSZZ Solidarność and PZPB representatives pointed to the lack of long-term policy

<sup>36</sup> A self-governing association dealing with the problems of construction sector (without having a status of a trade union)

<sup>37</sup> Bilfinger Infrastructure, Budimex, Erbud, Hochtief, Mostostal Warszawa, Mota-Engil, Polimex-Mostostal, Skanska, Unibep, Warbud.

<sup>38</sup> Deklaracja KSiBiPD przystąpienia do programu “Bezpieczna budowa”, available at: <http://www.solidarnosc.org.pl/sbipd/galeria/Deklaracja.pdf> (accessed on 20 December 2015).

<sup>39</sup> See: <https://www.premier.gov.pl/wydarzenia/aktualnosci/nowe-prawo-zamowien-publicznych-koniec-dyktatu-najnizszej-ceny.html> (accessed on 20 December 2015).

in construction sector, in particular with respect to its future at the moment in which EU structural funds will end (**I7, I9**). For a long time, the involvement of the state in sectoral social dialogue has been assessed as limited (Towalski 2004)<sup>40</sup>.

## 8.4. Conclusions

The precarisation of employment in the construction sector reveals some sector-specific characteristics. They include large scope of unregistered work, low wages accompanied by “envelope” payments, irregular working time, the high relevance of temporary employment and low importance of temporary work agencies replaced by outsourcing companies. The limited representativeness of employer organisations and trade unions in the sector, the lack of developed state policies for construction and deficiencies of tripartite social dialogue contributed to the emergence of “soft” approaches to the problems of precarious workers which focus on recommendation with regards to minimum estimate wages, health and safety regulations, and certification of qualifications to avoid underemployment. A tangible effect of coordinated lobbying actions by social partners are some favourable changes in the Public Procurement Act in 2014 which introduced non-price related criteria (including the possibility of social clauses concerning employment standards) in the public tenders.

## 9. Retail sector

### 9.1. A brief characteristics of the sectors’ economic position and employment trends

The retail sector in Poland contributed to 16,3 per cent of the GDP in 2014 (RS GUS 2015). Cross-country research and analyses demonstrate that the retail sector can be characterised as the low-paid sector, where non-standard forms of employment, such as part-time work, temporary work and self-employment, are common and employee representation is less developed than in other sectors (Adam, 2011; Czarzasty, 2010, Carre et al. 2010; Geppert et al. 2014; Mrozowicki et al. 2013). In the Polish context of the late 1990s and 2000s, large, foreign retail super- and hypermarkets, as well as discount shops were criticised as the sites of precarious labour conditions which, in turn, triggered trade union organising efforts, the emergence of non-union employee interest organisations and intensified controls of large retailers and discount shops by State Labour Inspectorates (Czarzasty 2010). As a result, employment conditions in discount shops, hypermarkets and large retailers began to gradually improve, in particular as compared to small, often family-based businesses in which informal wages, employment and irregular working hours were still common.

As we observed in our previous study, the retail sector in Poland has not been as strongly hit by 2007+ economic crisis as other sectors and thus “the adoption of various cost-saving measures by employers, including non-standard forms of employment, did not just represent a strategy for coping with the crisis but also of leveraging the ‘crisis discourse’ to reduce labour costs and thus promote future competitiveness” (Mrozowicki et al. 2013: 269). The crisis affected to greater degree smaller retailers while discount stores and multinational convenience stores were expanding (Kłosiewicz-Górecka 2014). The share of retail shops with foreign capital grew from 2,6 per cent in 2009 to 4 per cent in 2013 of the total number

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<sup>40</sup> Other campaign worth mentioning was a campaign “Campaign for Fair Work” carried out during the preparations for Euro2012 in Poland and Ukraine by Budowlani Trade Union, NSZZ “Solidarność”, Ukrainian trade unions (CBMIWUU), Building and Wood Workers International, and co-funded by the Friedrich Ebert Foundation. This campaign is to be still closer explored in the next phase of the project as one of its topics was the criticism of “junk contracts” in construction sites.

of shops (Kłosiewicz-Górecka 2014: 99) and amounted to over 27 per cent of the total sales area in the sector. This is accompanied by the process of integration of small Polish retailers within larger retail and distribution groups. As of 2015, discount shops enjoyed 24 per cent and hypermarkets 12 per cent of the market share (Dlahandlu.pl, no date). The turnover of the retail sector in Poland amounted to around 710 billion PLN, including 560 billion PLN by various retail chains (230 billion PLN in the case of the foreign retail chains, 330 by the Polish groups) (POHiD 2015). In the recent years, the market also observed an accelerated growth of franchise systems encompassing various formats (wholesale, supermarkets, small convenience stores), with the largest companies such as Mid Europa Partners (Żabka and Freshmarkets), Eurocash, Makro, Carrefour Express, Małpka Express and Specjał (ibidem); this is accompanied by a slow decrease in the number of independent shops which are not integrated within distribution groups. (I11).

The basic employment trends in the sector are presented in table 16. The retail sector observed a drop in the levels of employment between 2008 and 2013, with some recovery observed in 2014. The majority of workforce is female (73 per cent in 2014). The same data for Eurostat present similar overall trends, but figures are higher since they are based on labour force surveys while the GUS statistics are self-reported by companies.

**Table 16. Basic employment trends in the retail sector, in thousand (2008-2014)**

Year	2008	2009	2010	2011	2012	2013	2014
Employment (GUS) <sup>1</sup>	1276,7	1217,6	1232,9	1222	1179,3	1183,9	1215,6
Employment (Eurostat) <sup>2</sup>	1476	1459	1430	1428	1435	1400	1420

Source: (1) GUS, Statistical Yearbooks; (2) Eurostat Labour Force Survey (Note: Age 18-64);

## 9.2. Common forms of precarious work

The picture emerging from the existing statistical data indicates that the main forms of precarious work in the sector is **temporary employment** and **low wages** (regardless of employment status). According to the leader of KSH NSZZ Solidarność (I10), the main reasons for the expansion of precarious work are “social dumping” (lowering labour costs in Poland and transfer of revenues to home countries of multinationals), trade union weakness and disengagement of the state from influencing labour conditions in the sector. According to August '80 leader in Tesco, business problems in home country translate in attempts to lower employment costs in Poland. By contrast, the representative of employer organisation (POHiD, I5) emphasised the role of business processes of capital integration as the sources of flexibilisation of employment.

Precariousness in the retail sector in Poland means in particular low wages regardless of the type of the contract. The labour costs in the retail sector amounted to 19,99 PLN per hour in 2012 (59 per cent of the average hourly labour costs in Poland in 2012) as compared to 15,68 PLN in 2008 (65 per cent of the average hourly labour costs in Poland in 2008) (RSP GUS 2014a). In 2014, 24 per cent of employees in the sector had their wages lower than national minimum wage (GUS 2015b). 37,6 per cent of sector employees were classified as low-wage earners by Eurostat in 2010; the figure being the highest among the sectors studied in the PRECARIR project in Poland. In terms of wages, our informants representing trade unions emphasised that the worst situation can be found in small and medium enterprises (I1), while the representative of employers (I5) pointed to the franchised shops.

**Table 17. Temporary employment, part-time employment and self-employment in retail, wholesale and repair of motor vehicles as the per cent of the total employment**

	2008	2009	2010	2011	2012	2013	2014
Total employment (1000)	2308	2315	2269	2255	2247	2204	2269
Share of temporary employees in total employment (%)	34,0	33,9	35,2	34,3	35,0	34,7	36,7
Share of part-time employees in total employment (%)	10,3	10,1	10,7	10,5	11,2	10,9	10,2
Share of self-employment (own account workers) (%)	12,8	12,2	12,7	12,8	12,0	11,8	11,8
Share of self-employment (total) (%)	21,3	20,5	21,0	21,3	20,6	20,6	20,1

Source: Eurostat Labour Force Survey, Notes: Age 18-64, section G (Wholesale and retail trade, including repair of motor vehicles), NACE Rev 2.

In terms of employment characteristics in the sector, we have to rely on the statistics for the section G (retail, wholesale and repair of motor vehicles) as lower level aggregation is not available in Eurostat nor GUS (national statistics). In total, paid employees with the Labour Code employment contracts accounted for 78,9 per cent of the total employment in the sector in 2014 (as compared to 76,9 per cent in 2008) (GUS 2015d). Between 2008 and 2014, temporary employment in the section G grew from 34 per cent to 36,7 per cent, in both cases being higher than the national averages. Temporary employment and civil law contracts are more typical of smaller retailers and work agencies offering temporary staff for the sector, while in the unionised, larger super- and hypermarkets, as well as discount shops open-ended contracts are norm (following probation periods). As of 31st December 2014 5276 persons were employed via TWAs (the number is similar for 2012 and 2013).

The share of part-time employees in the sector remains relatively low, comparable with national averages and stable (10,3 per cent in 2008, 10,2 per cent in 2014). However, it should be noted that according to national statistics, the share of employees working less than statutory 40 hours per week in the retail sector in 2012 amounted to 19,4 per cent (as for section G) (RSP GUS 2014). As far as working time is concerned, the average working time in the section G (wholesale and retail, including repair of motor vehicles) was 41,2 hours per week in 2014; just slightly higher than national average (40,7 hours/week). Our union informants pointed to the tendency to extend working-time reference periods in case of non-unionised companies. They also indicated that the actual working time strongly varies depending on the type of contracts; for instance, it was suggested to be a common practice in some large hypermarkets to employ workers part-time and offer overtime depending on the demand (**I12**), and sometimes not paid as overtime due to extended working time reference periods (**I13**). According to Czarzasty (2014: 120-128), the share of part-time employers in three hypermarket chains he studied varied between 1/10 and 1/3 of the total workforce. Our union informants (**I12**, **I13**) suggested that new employees, in particular, are offered part-time contracts only. Part-time employment is most typical of cashiers to guarantee high level of flexibility. Another form of precarisation is raising functional flexibility and multiskilling which is expressed in growing number of task assigned to an individual employee and employment of shop-floor staff with a very general job descriptions such as “sales attendant-cashier” or “customer advisor” to justify multitasking. The latter is strongly criticised by unions (**I12**, **I13**, **I21**).

Self-employment in section G dropped from 21,3 per cent in 2008 to 20,1 per cent in 2014 (table 17), the share of own account self-employed also decreased from 12,8 per cent to 11,8 per cent. Civil-law employment accounted for around 6,4 per cent of the total employment in section G in 2012, 6,8 in 2013 and 6,1 per cent in 2014 (no longitudinal data

available, GUS 2014b, 2015d)<sup>41</sup>. Unfortunately, no data is available for the retail sector only. It can be noted that retail sector notes the highest number of claims to the State Labour Inspectorates by workers against their employment with civil law contracts under conditions typical of employment relationship (23,4 per cent of all claims made in 2014) (PIP 2015).

Dependent self-employment was recognised an important form of precarisation in an interview with the representative of the employer organisation, POHiD. The reference point was the case of franchising which is related to high financial insecurity, high dependency on integrative centrals in terms of products sold and growing debts arising from two former factors (Jurkiewicz 2015). As observed by our informant (I5), *“if you create a system which has more than 4000 shops, with 70-80 m2 of sale area on average per shop, in which 3-4 people work, usually a family, you influence it by a certain standard. From the perspective of HR management in a corporation, it is precariat. And from a perspective that they are entrepreneurs bounded by a contract, it is self-employment, a provision of service called “management and running a shop”* (I11).

There is no precise data on the scope of temporary agency work in the sector; according to POHiD representative they might account for some 10-12 per cent of employed, but in some hypermarkets the actual figure might be much higher and outsourcing of certain tasks is said to be a common tendency (Czarzasty 2014: 216). However according to the data of PFHR in 2014 4,5 percent of temporary agency workers employed by the agencies affiliated to PFHR worked in retail (Polskie Forum HR, 2014). A typical trend regarding temporary agency work in the sector is its seasonality - for instance, in between the end of November 2015 and the end of January 2016, retail employers planned to employ around 30 000 temporary agency workers<sup>42</sup>. According to one of our union informants (I13), one of the disadvantages experiences temporary agency workers are not only lower wages (especially if they are employed with civil-law contracts), but also material, personal responsibility for all mistakes made (for instance by cashiers). Temporary agency workers are also often those for whom social security contributions are lower or non-existent, e.g. students, retirees or people with various disabilities (state subsidised employment, I21). Although no precise data is available, some of interviews (I10) included suggestions that TAWs in the retail sector are often employed with civil law contracts.

It is difficult to estimate to scope of unregistered employment in the retail sector. However, it is worth noting that various forms of “grey economy” in the section G contributed around 6,2 per cent to the Poland’s GDP in 2012 (GUS 2014b); the highest share of all sections. Anecdotal evidence from earlier research by authors also suggests that envelope wages are common in particular in smaller, family-owned shops. The relevance of informal employment might be also indirectly indicated by the discrepancies between employment figures of GUS and Eurostat in table 16 (by around 15 per cent).

An important factor contributing to the precarisation of employment in the sector is limited organisation of employees and employers. As far as labour relations are concerned, the sector is very low unionised (union density amounting to 2 per cent in 2015, GUS 2015c). Our union informants (I10, I12, I13) explained trade union weakness by high job rotation, fear of job losses, “management by stress”, threatening union members with temporary contracts to terminate them if they do not leave trade unions.

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<sup>41</sup> According to the trade union leader of National Section of Commerce of NSZZ Solidarność (I10), there might as many as 40 per cent of employees working directly or indirectly for hypermarkets who have civil-law contracts.

<sup>42</sup> Cf. <http://www.dlahandlu.pl/handel-wielkopowierzchniowy/raporty/30-tys-miejsc-pracy-tymczasowej-przy-wsparciu-sprzedazy-przedswiatecznej.47898.html>, accessed on 4 January 2016.

**Table 18. Dimensions of precariousness in the retail sector**

		Quality of working conditions dimension					
	Regulated by:		Wages	Working time	Job security	Social security	Representation (voice)
The formal employment status dimension	Labour Code	FT open-ended contract	No regulation at the sectoral level, minimum wage set by law	Tendency to extend working-time reference periods in case of non-unionised companies	Dismissal periods guaranteed by Labour Code	Regulated by Labour Code setting a standard	Limited worker organisation (mostly limited to large hypermarkets)
		Fixed-term contract	Generally low wages (23% employees had wages lower than minimum wage, which refers mostly to part-time contracts, but also to temporary employed)		Dismissal periods guaranteed by Labour Code - until February 2016 much shorter than in FT OE contracts		Limited - unions unwilling to organise because union membership considered important reasons for non-extension of the contract)
		Part-time contract		Regulated by Labour Code, but common practice of extending working time (extra hours on demand)	Dismissal periods guaranteed by Labour Code; growing share of part-time jobs in large shops	Lower contributions due to the nature of contracts	Limited worker organisation (mostly limited to large hypermarkets)
		TAW	No information on wages per sector, but wages considered generally lower	High flexibility, seasonality	Depending on the type of contracts - moderate (Labour Code) or no (non-Labour Code)	Dependent on a type of contract; lower contributions due to short-term nature of contracts	No union organisation, advisory work of unions in case individual TAWs' problems
	Non Labour Code	Self-employment, bogus self-employment	No regulation by Labour Code or other regulations	Not regulated, averagely longer working hours of self-employed as compared to other types	No job security	Usually minimum statutory contributions	No union organisation except for short-lived experiments (e.g. bazaar traders)
		Civil law contracts	No regulation by Labour Code or other regulations;	Not regulated	No job security, high rotation	No social security contributions in case of specific task contracts; obligatory contributions (with exceptions) in case of freelance contracts	No union organisation experiments (radical unions)



The largest trade union operating in the sector is the National Section of Commerce of NSZZ Solidarnosc (KSH NSZZ Solidarność). It claims to have around 15,000 members, predominantly in large, multinational hypermarket chains, mostly as a result of comprehensive organising campaigns carried out since the late 1990s, inspired by the Anglo-Saxon approaches to organising (cf. Czarzasty 2010; Mrozowski 2014). Another trade union, active mostly in a shrinking cooperative part of the sector, is Federation of Trade Unions of Employees in Cooperatives, Production, Commerce and Services in Poland affiliated to the All-Poland Alliance of Trade Unions (OPZZ) with some 6,000 members in 2010).

Employers in the sector are mostly not affiliated to employer organisation. The only relevant employer organisation is the Polish Organisation of Trade and Distribution (POHiD) affiliated to the “Lewiatan” Confederation, representing 13 large (mostly transnational) retail chains. However, it is not directly engaged in social dialogue and instead focuses on lobbying and giving its opinions on various legislative acts. In general, employment relations are not seen as the area of core interests of POHiD.

The strikes and collective disputes in the sector are relatively rare. There is also no tripartite body at the national level which could be used as a venue for social dialogue. There is no sectoral collective agreement and no company-level collective agreements in the sector except for cooperative segment of it (related to cooperatives “Społem”) in which they were simply retained from 1990s (and earlier) (Czarzasty 2011). At the present moment (December 2015), some discussions are carried out in one of the hypermarket chains on the company level collective agreement, with no visible outcomes in sight (I2, I20).

### 9.3. Union and employer actions to tackle precarious work

Due to limited institutional basis for social dialogue in the sector, the most of the actions undertaken by trade unions and employers in the retail sector are **unilateral**. If there is any form of social dialogue present, it can be observed at the company level in some unionised large hypermarkets. Therefore, it is difficult to mention any joint initiative to tackle the issue of precarious work carried out together with employer organisations at the sectoral level. The most important venue during which trade unions and POHiD meet are academic, business and union conferences. The only institutionalised forms of joint actions can be observed at the company level in larger hypermarkets in which “soft” cooperation agreements were signed which basically opened the way for unions to unionise their employees. At the present moment, cooperation agreements exist in Auchan, Kaufland, Carrefour, Tesco, Makro Cash&Carry

Trade union discourse concerning the problems of precarious workers in the sector is internally divided. On the one hand, there is the idea that unions represent all employees regardless of employment contract. On the other hand, there is also a strong conviction that they cannot offer much to those with civil law contracts, self-employed or TWAs' workers in the franchised companies or in super- and hypermarkets (I10, I12, I13). In practice it is only a small minority of those with temporary employment and part time contracts who belong to unions and almost nobody with other types of contracts. Thus, the **exclusion** strategy combined with the idea of **elimination** of all forms of precarious work in the economy by political and legislative means at the higher level seems to dominate.

It is difficult to present any coherent approach to the problems of precarious work on the side of employer organisations as the only employer organisation in the sector, POHiD, is not directly involved in the debates on employment conditions and HRM practices in the sector and participates in the tripartite social dialogue only through the Lewiatan Confederation<sup>43</sup>. The director of POHiD (I11) emphasised that some forms of precarisation are reduced by **business interests** of

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<sup>43</sup> An employer organisation participating in the Social Dialogue Council (formerly, the Tripartite Commission for Social and Economic Affairs).

large retailers and discount chains whose managers are interested in counter-acting high job rotation of key personnel in their companies by relatively higher wages and benefits which are not available in small shops. This would indicate the **reduction** approach according to the PRECARIR project framework. Simultaneously, there are no visible counter-actions of employers to the **expansion** of precarious employment in some segments of the retail sector, such as temporary work agencies and franchised shops.

KSH NSZZ Solidarność<sup>44</sup> was involved in the following actions which explicitly tackled the issues of precarious employment:

- **trade union organising** supported by the Union Development Office of NSZZ Solidarność (Czarzasty 2014). The most recent large-scale “success story” was Kaufland. It resulted in gaining over 1 000 employees in one year (2010), a monthly pay increase of €25–50 and the transformation of existing temporary contracts into open-ended contracts for all employees. However, this was a one-time gain which was not repeated again. Importantly, trade union organising has not involved those with civil law contracts as trade union “has nothing to offer for them”. The new direction for trade union organising are logistic companies which cooperate with hypermarkets. The KSH is also indirectly involved in trade union organising in Amazon - however, the first successes were noted in the case of another union, radical anarcho-syndicalist All-Poland Trade Union Workers’ Initiative who managed to organised 150 workers.
- protest actions and collective disputes in the shops (currently - end of 2015 - in Tesco, NSZZ Solidarność is carrying out a strike referendum following collective dispute on wage increases and equalisation of wages across shops in various parts of the country to limit wage differentials – **I12**)
- **public and new media campaigns**, for instance
  - a ‘hyper-exploitation’ webpage (hiperwyzysk.pl) which makes it possible for retail sector employees anonymously to voice their concerns about issues of pay and working conditions in their companies. The webpage was registered in August 2011, but it is currently unavailable.
  - campaign against **work on Sundays** and shopping on 24 December (in the Christmas Eve; a similar campaign was launched by August ’80) - with a partial success of shortening working hours on 24 December in most of large-scale retail shops;
  - activities within the international “**Day of decent work**” (6 October 2014), including happening in Warsaw during which MPs were encouraged to help unload heavy pallet truck, letter campaigns to the government and MPs);
- **monitoring the expansion of precarious work**: KSH carries out quantitative research with the help of an external research company (S-Partner) and cooperates with other research institutes, such as for instance the Institute of Occupational Health Care (monitoring stress level in the sector), Central Institute for Labour Protection - National Research Institute, as well as university researchers.
- **counselling and legal advice** for those with civil-law contracts and self-employed. This includes directing workers to Labour Inspectorates and non-governmental organisations, such as the Association of Franchise Holders “Żabka” (involving the self-employed franchise holders of small-format convenience chain “Żabka”)
- reporting the violations of labour law to the National Labour Inspectorate which results in the **systematic controls of working conditions in hypermarket chains**.
- concluding **partnership agreements** with selected hypermarket chains (Auchan, Kaufland, Tesco, Carrefour, Makro). The agreements basically regulate union access to employees and reinforce the regulations of the Labour Code, but they do not have a status of collective agreements.

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<sup>44</sup> All information from the I1 interview.

- involvement in the actions organised by the **national level unions**, such as campaign to raise the minimum wage to 50 per cent of the national average wage or campaign “Sisyphus” (against the expansion of “junk contracts”)
- attempts to influence the level of staffing by temporary work agencies in some hypermarkets (together with other unions, such as August ’80 and the Confederation of Labour OPZZ).

In the case of **August ’80**, the catalogue of actions is much more limited. The union is basically represented in one hypermarket (Tesco) in which it organised the **first strike** in the retail sector in Poland in 2007. They also attempted to organise discount shops (with one success in “Biedronka” in Bydgoszcz). Besides struggling for wage increases, the union also attempts to provide legal advice and counselling for non-standard employees. An original attempt to increase union structural power was **an inter-company union committee** with August’80 in Fiat Poland (**I13**). This was crucial in the strike action in 2007 when automotive sector workers (and miners) supported striking cashiers; they also help by knowledge sharing about trade union law. In 2011/12, August ’80 was also involved in the **public campaign** “Stop junk contracts” which involved rallies across the country.

Other trade unions active in the sector are less visible in terms of their actions at the sectoral level, but some of them (e.g. Confederation of Labour) are relatively active at the company level in some large shops or specific parts of the sector. For instance, the Confederation of Labour OPZZ was involved in organising bazaar traders (mostly self-employed) (**I18**) who protested against the liquidation of their workplaces. It is also very active in Tesco shops in the Silesian voivodship in which it achieved a status of the majority union in the Częstochowa hypermarket. Similarly to August’80, it also relies on various forms of protest-based organising and represents full-time, part-time and temporary employees (**I21**).

The only significant employer organisation in the sector, the Polish Organisation of Commerce and Distribution (POHiD), is not directly involved in collective bargaining or social dialogue. It is involved indirectly through its participation in the “Lewiatan” employer confederation (“we are not allowed to intrude into it”, **I11**). However, it is consulted by the government on issues related to the sector (Czarzasty 2011). It also issues statements in which it enters into dispute with trade unions, for instance indicating the economic costs of possible ban on work in the sector on Sundays or, more recently (2016), planned taxes on retail sales. **POHiD** also puts an explicit emphasis on the issues of **corporate social responsibility** in which desired relations with workers are described in terms of “equal chances, counter-acting discrimination and designing professional development pathways”<sup>45</sup>. However, the interviewed director of the POHiD secretariat (**I11**), discussed several challenges to such a strategy, including difficulties to execute the CSR solutions in member organisations. He also emphasised that the prospects for signing sectoral level collective agreement are limited due to different “rules of creating human resources” in various segments of the sector, as well as inter-union competition. Instead, he proposed (most likely as his own idea rather than the initiative of POHiD) the introduction of non-governmental, expert organisations which could serve as mediators capable of identifying common problems in the sector, mediating between employers and trade unions and proposing viable solutions.

## 9.4. Conclusion

In the recent years, the retail sector has observed the processes of systematic business integration manifested, on the one hand, by further expansion of foreign-owned retail chains and, on the other hand, the development of large, mostly Polish-owned networks of distribution centres which managed to link together smaller retailers and stores. It seems that these two segments of the retail market represent the various forms of employment conditions dualisation. On the one hand, the development of part-time employment and temporary agency work is more typical of foreign-

<sup>45</sup> <http://www.pohid.pl/dzial,index,12,Zaangazowanie-spoeczne-POHiD.html> (accessed on 20 December 2015).

owned super- and hypermarkets; on the other hand, we observe a dependent self-employment in franchised shops integrated the Polish distributors. Simultaneously, a third, traditional segment of the sector, based on the small, often family-based, independent shops struggles to survive by adopting various forms of functional, numerical and wage flexibility and (partially) informal employment. Despite some positive developments (mostly in larger shops, discount stores and super- and hypermarkets), the retail sector remains a low-wage sector. The institutional basis for social dialogue aimed at combating precarious employment is weak: trade union membership is low and present mostly in foreign-owned retail chains and the only employer organisation seems to be not interested in social dialogue, instead focusing on the issues of corporate social responsibility which covers to a very limited extent employment issues. Nevertheless, some positive effects of trade union actions began to be visible, mostly at the level of raising public awareness about the poor working conditions in the sector.

## 10. Temporary work agencies (TWA)

### 10.1 A brief characteristics of the sectors' economic position and employment trends

As mentioned in the part I of the report, the history of temporary work agency sector reaches back to 2003 when the Tripartite Commission started the works on the project of the Act on Employment of Temporary Workers. However, the market of agency employment existed since the mid 1990s. As stated by one of our informants, the law expert of NSZZ Solidarność: *"The employment agencies started to appear on the market by the late 1990s., but there was no [specific] act in Poland. There was the Act on Employment and Unemployment [Ustawa o zatrudnieniu i bezrobociu] from 1994 and it was defining the tasks employment agencies"* (I14). Ever since the introduction of the proper law on temporary agency employment (the Act on Employment of Temporary Workers) and its further regulations, the sector has started to expand.

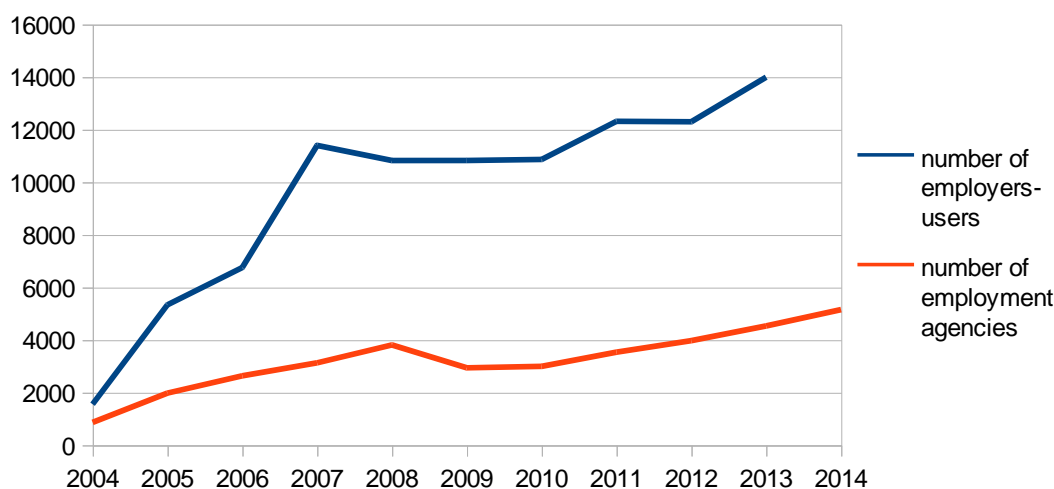
At present, the sector in Poland is characterised by a relatively high level of fluctuation of companies operating on the market and thus high level of its fragmentation. In 2014 there were 5 157 employment agencies among which 1 762 provided the services of temporary work agencies (MPiPS 2015). According to the Act on Employment Promotion and Labour Market Institutions (enacted in 2004, with further amendments), other activities of employment agencies include job broking in Poland, job broking for employers abroad, personal consultancy and professional counselling. In 2014 almost 98 per cent of concluded contracts by employment agencies concerned the employment in Poland and 2 per cent the employment abroad, mainly in the Netherlands and Germany (idem).

The rotation of companies on the market is very intense and stood on the relatively same level in the last years. For instance, in 2014 there were 1268 employment agencies established and 625 were shut down (Polskie Forum HR, 2015a). Most of the agencies (40 per cent) are small, sole trader companies often established to provide services only for one employer-user.

As indicated by the data (on the number of employment agencies, temporary agency workers and employers-users – figure 7), apart from the decline in 2007 and 2009, since 2004 we can observe a constant growth of the sector. The number of temporary agency workers grew from 167 644 in 2004 to 559 465 in 2013 and over 700 000 in 2014 (Polskie Forum HR, 2015a, MPiPS 2015, see also figure 4 in Part I). After relative decrease and stagnation in the number of agencies between 2007 and 2010, the process of sector expansion has been triggered again. As indicated by one of our interviewees, this expansion could be related to the legislative changes: *"Since 2010 the number of agencies has doubled [...] This is related with the changes in law and embracing by the category of employment agency all services such as job broking, so there is more employment agencies. Why? Because it is very simple to establish such agency."* (I14). According to our other informant from the Ministry of Labour and Social Policy, during the legislative works of the Tripartite Team on Labour Law and Collective Agreements by the Tripartite Commission, in 2009 there were new regulations introduced expanding the group of employers who could gain a status of

employer-user, what was called “pro-developmental” change (I16). Thus we could interpret that the demand influenced greater supply of the TWAs' services.

**Figure 7. The number of employers-users and the number of employment agencies in 2004-14**



Source: Ministry of Labour and Social Policy, OKAP 2014, MPiPS 2015

In 2013 the index of market penetration – the relation between the number of full-time jobs of temporary agency workers and the overall number of the employed – was at the level of 1,2 per cent (Polskie Forum HR, 2015a: 15). Relying on the data derived from PFHR (Polskie Forum HR, 2015a), and thus concerning the situation in their membership organisations only, most of the TWAs' workforce is constituted by production workers (84 per cent). In 2013 (most recent data), the members of the PFHR were mostly employed in manufacturing (61 per cent, including 32,7 per cent in automotive and machine industry) and services (22 per cent, including 4,5 percent in retail) (Polskie Forum HR 2014). Similar, but more detailed data are provided by GUS (see table 19), according to which the manufacturing sector is a dominant sphere of TAWs employment (61633 persons employed as of 31 December 2014), the second sector in the rank is the trade and repair of motor vehicles (9797 persons employed as of 31 December 2014).

**Table 19. Persons employed by temporary work agencies as of 31.12 by selected sectors**

	2012	2013	2014
Persons employed	83213	79096	92486
<b>Manufacturing</b>	41203	53960	61633
Transportation and storage	3444	4691	9797
<b>Trade; repair of motor vehicles</b>	5041	5137	5276
Administrative and support service activities	24431	3211	3546
Professional, scientific and technical activities	1587	4792	2884
Education	1806	1452	1974
Information and communication	960	1434	1782
Public administration and defense; compulsory social security	1106	1106	1073
<b>Construction</b>	1189	1283	1053
<b>Human health and social work activities</b>	932	311	663

Source: GUS, Statistical Yearbooks; Note: listed sectors are only those in which persons employed by TWA exceeded



**Table 20. Number of concluded contracts with TWAs by the groups of occupation in 2014**

Name of the group of occupation	No of concluded contracts	Share in total concluded contracts (%)
Workers performing simple works*	676047	35,9
Warehouse employees	174601	9,3
Packers	118736	6,3
Controllers of industrial processing**	98319	5,2
Operators of manufacturing machines and equipment**	85656	4,5
Workers employed by the commodities transshipment	73592	3,9
Assemblers***	128019	6,8
Forklift drivers/operators	60806	3,2
Total	1883852	100

Source: MPiPS 2015; Note: Groups of occupation listed in the table for which the number of concluded contracts exceeded 50 thousand \* Employees performing simple casual (temporary) work not classified elsewhere ; Workers performing simple work in the industry not classified elsewhere ; Employees by the simple works not classified elsewhere; (\*\* not classified elsewhere) (\*\*\*)Assemblers not classified elsewhere; Assemblers of machines and mechanic equipment).

As indicated by more detailed data provided by the Ministry of Labour and Social Policy (Ministerstwo Pracy i Polityki Społecznej – MPiPS) the majority of the concluded contracts in 2014 were among workers performing simple works (35,9 per cent of all concluded contracts, see table 20). Thus looking at the listed occupational groups among which the temporary work agencies concluded most of the contracts it can be stated that the sector is dominated by job offers for low-skilled and unskilled workers.

## 10.2 Common forms of precarious work

According to the existing data and most of our interviewees, the employment in the sector could be characterised as very flexible and insecure with the prevalence of rather low skilled and low paid jobs. The flexibility and job insecurity are resulting from both short-time multiple concluded contracts per employee and the preponderance of civil-law employment on the labour code employment.

According to the MPiPS data of 2014 (MPiPS 2015), only 44 per cent of temporary agency workers had a regular employment contract, the rest of the workforce was employed on civil law contracts (by comparison, in 2005 there were 62 per cent of regular employment contracts, MPiPS 2006). However, as suggested by the PFHR data (Polskie Forum HR 2015a: 17), 91 per cent of temporary agency workers in its membership organisations had an employment contract. The data by MPiPS (2015) for 2014 shows that less than 8 per cent of the employed by temporary work agencies had a consecutive employment lasting longer than 12 months (most of TWA's employment – 58 per cent – lasts less than 3 months). As estimated by one of our informants – the head manager of the PFHR, in most cases it is a part-time job (on average 10 hours of work per week per one employee), and if we calculate the total number of hours worked in 2013 the jobs offered by the members of the PHHR were equivalent of 56 634 “full time jobs” (*full time equivalent, FTE*) (254 000 part time jobs) (Polskie Forum HR 2015a: 16); for the whole sector the FTE was estimated by the same informant at the level of 160 thousand (**115**).

Although, given the data on market penetration and level of employment, it could seem that the sector is relatively small and insignificant in terms of the whole labour market, it has, as estimated by one of our interviewee, a great influence on the precarisation of work at large:



*“Looking at the past five years we could say that we observe a kind of stagnation, although we know that the process did not stop [...] but in case of Poland we need to go back into the last 10-15 years [...] temporary work agencies started to exist in 2003 [...] and in my opinion back then, that is 10 years ago, there was a shift, a qualitative jump even, to the precarised, maximally flexibilised labour market in Poland” (I19).*

When asked about the main developments considering the precarisation of work in the sector in the last five years, our interviewees pointed to two major problems. First, the fragmentation of the market, coupled with the highly flexibilised working conditions as well as a very low level of unions’ activity and presence in the sector, create the opportunity to omit the regulations of the Act on Employment of Temporary Workers, firstly by transferring the workforce from one agency to another when the maximum duration of temporary employment (18 months) expires, and secondly by abusing the civil law employment. As stated by a legal expert of NSZZ Solidarność, it is connected to the lack of precise regulations on TWAs what creates the possibility for by-passing it: *“We have this regulation, that of the maximum duration of temporary [agency] employment, 18 months, and what I encounter is that the same employee is directed to the same employer-user but through different agencies. At first by the agency A for 18 months, then by agency B, and then C. The regulations of the Act [Act on Employment of Temporary Workers] are unclear, because they enable the agencies for different kinds of pathologies [...] and here is the danger that such a person [employed by TWAs] will never become a permanent employee, and this is the premise of the Act [Act on Employment of Temporary Workers] [...] Temporary [agency] employment is supposed to be a bridge between unemployment and permanent employment, and so far we observe increasing pathologies [...] In fact, one can be a temporary [agency] worker for the life time” (I14).* Thus, it can be suggested that TWAs which supposed to be a bridge between temporary and stable, regular employment, now happens to be, at least for some part of the workforce in the sector, a place of “permanent” employment but with high level of social and job insecurity. It has to be reminded that unlike in some other European countries, it is impossible to be employed with open-ended contracts in the TWAs in Poland.

Secondly, the regulations of the Act on Employment of Temporary Workers are systematically evaded by (probably increasing) activity of outsourcing companies. The main producers or contractors, especially in the sectors such as construction and steelworks, make use of the services of work outsourcing companies to bypass the prohibition of temporary employment in case of jobs defined as “particularly dangerous” (e.g. work on heights, construction works, works with the use of hazardous materials<sup>46</sup>) or to find a way around the regulation on the maximum period of employment by a temporary work agency. As reported by our interviewees in the steelworks such companies are often a branch of the main TWAs established solely for the purpose of work outsourcing and often for the recruitment needs of one subcontractor. All our interviewees define this problem as a “pathology” (I14, I15, I16). When asked about its roots, one of them explained (I14): *“This is probably related with the difficulty of division between the outsourcing activity of the entities acting as subcontractors and the activities performed by the employment agencies. The employment agencies have to be registered by the voivodship mayor [...] they have to act by the law [on employment of temporary workers - AM], but the entity which performs outsourcing does not have to fulfill that, and it still can function. Perhaps the problem is in the Polish Act [Act on Employment of Temporary Workers] which does not limit such activity, and it would not be simple to introduce that because it would violate the regulations on the freedom of economic activity”.*

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<sup>46</sup> The regulations on “particularly dangerous” works were defined in the Ordinance on general regulations on health and safety by the Ministry of Labour and Social Policy: Dz.U. 1997 nr 129 poz. 844, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19971290844>. (accessed on 20 December 2015).

**Table 21. Dimensions of precariousness in the temporary work agency sector**

		Quality of working conditions dimension					
	Regulated by:		Wages	Working time	Job security	Social security	Representation (voice)
The formal employment status dimension	Labour Code	FT open-ended contract	Not possible in accordance to the Polish regulations				
		Fixed-term contract and part-time contract	No sectoral regulation In case of employer organisation (e.g. PFHR) affiliates - minimum wage regulations adhered to; no precise information on “non-organised” parts of the sector but wages are believed to be generally lower	Regulated by Labour Code	Shorter dismissal periods regulated by the Act on Employment of Temporary Workers (2 days in case of employment < 2 weeks; 1 week if employment > 2 weeks) Maximum periods of employment at one employer-user: 18 months in the period of 36 months	Regulated by Labour Code. Lower contributions due to short-term nature of contracts	No sectoral level union organisation, advisory work of unions in case of individual TAWs’ problems; Company-level experiments in covering TAW by collective agreements and organising
	Non Labour Code	Civil law contracts	No regulation by Labour Code or other regulations; wages in the sector generally lower	Not regulated	No job security, high rotation, seasonality	No social security contributions in case of specific task contracts; obligatory contributions (with exceptions) in case of freelance contracts	No union organisation except for experiments (radical unions)

As pointed in other cases in this report (see chapter on steelworks), the National Labour Inspectorate has too limited tools to deal with this kind of law by-passing. Also, when asked about this practice, the representatives of the Ministry of Labour and Social Policy were reluctant to link it with the problems of regulations on TAWs, and declared that is of no interest while examining the weaknesses of TWAs regulations as this is a different matter (I16). Therefore, it can be summarized that the existing practices of replacing temporary agency employment with outsourcing, if there are premises of the TWA employment, results from both to weak regulations on the agencies activities and the lack of legal tools to forbid this practices and penalize them. As noted in the next section, the latter issue became a subject of legislative proposals elaborated by social partners and the Ministry of Labour and Social Policy.

The last problem of precarious employment in TWAs sector results from the level of wages. Looking at the data on occupational groups which most often conclude contracts with TWAs (workers performing simple works), we can deduce that it is a generally low-wage sector. This coupled with the data provided in the report on wages in agencies consolidated in stating that “Workers performing simple work are the most poorly paid group of employees. On average they earn 11,28 PLN per hour” (Polskie Forum HR 2015c: 4). Also the data provided by GUS (2015a) point that 24 per cent of persons who were paid below the minimum wage (in December 2014) were those in the sector of administrative services and allied activities, which is the one where the TWAs are classified in.

Industrial relations in the sector are characterised by very low union density and the lack of sectoral-level trade unions combined with a relatively good organisation of employers. As already mentioned, a limited union organisation also contributes to the process of precarisation in the sector, increasing power asymmetry between employers and workers. 22 large companies operating in Poland, such as (among others) Randstad, Adecco, Manpower and Trenkwalder, are united in the employers' organisation, the Polish HR Forum (Polskie Forum HR, PFHR). The PFHR claims to cover 40 per cent of the temporary agency workforce. There are also other two employer organisations in the sector: the Association of Employment Agencies (SAZ, Stowarzyszenie Agencji Zatrudnienia) and the All-Polish Convention of Labour Agencies (OKAP, Ogólnopolski Konwent Agencji Pracy). There are no sector-level trade unions, but there are some attempts (especially by NSZZ Solidarność, but also some radical unions, such as All-Poland Trade Union Workers' Initiative) to organise temporary agency workers within company-level and inter-company union organisations. The examples include some steelworks belonging to AMP and Alchemia SA (see section 7 of the report, on steelworks, part II) and some automotive sector companies (e.g. VW Motor Poland in Polkowice).

### 10.3. Union and employer actions to tackle precarious work

When it comes to actions undertaken against precarisation of work in the sector, we can observe two parallel (in some points intertwined) processes. The first one consists of political lobbying and actions to bring legislative changes into the TWAs' regulations. The second one concerns company-level activities focused on organising temporary agency workers. In that matter, trade unions approach toward negative effects of TWA's employment is similar as in the other sectors presented here (retail, steelworks) that is on the one hand a combination of **exclusion** with some rare examples of **inclusion** – in both terms: general regulations on labour market and unions as well as organising inter-company committees with regular and TWAs employees – and on the other hand **reduction** – as a pragmatic strategy of the overall amount of such employees – with the ultimate goal of **elimination** (mainly the already named “pathologies” the national level). Looking at the employers' organisations approach, we can speak about **separation** – in terms of special regulations for TWAs and their employees, apart from the Labour Code – and two opposite attitudes toward the development of such employment: **reduction** – in terms of the abuse of civil law employment by TWAs – and **expansion** related with the inherent interest of employers' organisations representing TWAs businesses. Also, if we consider the state as an active subject in

the sphere of TWAs (i.e. as a legislator and labour policy maker) we could characterise its stance – for the reasons quite similar as those of employers' organisations – as a mixture of **separation** and **expansion**.

As the both sides – the unions and employers' organizations – are quite active in the legislative field concerning TWAs, in the further part of this section we firstly describe some of the initiatives undertaken by social partners on the national level. Secondly, we present some common postulates (however not fulfilled yet) of unions and employers' organisations and the postulates on which they disagree. Lastly, we give some examples of the tools used by unions to organise temporary agency workers.

Social dialogue in the sector is weakly institutionalised; there is no multi-employer collective agreement and there are no company-level collective agreements. However, some initiatives at the national level in the sector are worth noting. In the mid 2007, a compromise was reached by trade unions and employer organisations in the Tripartite Commission for Social and Economic Affairs (TK) which gave company-level unions the right to consult employers' intents to entrust temporary work to temporary agency (Sula 2008, **I16**). In particular, if an employer-user who intends to retain a temporary agency worker for a period longer than six months, it obliged to “undertake actions aimed at arranging this intent with representative trade union organisations” (Art.23). However, as pointed by the interviewed legal expert of NSZZ Solidarność, this legal construction is open to many interpretations (**I14**). In 2009, the Ministry of Labour and Social Policy introduced, without reaching a compromise with trade unions, the possibility to extend the maximum employment period for an employee working for one employer-user from 12 months to 18 months (within consecutive 36 months). Other changes introduced the possibility to issue one certificate of employment after 12 months of employment via TWAs (simplifying the procedures) and the extension of the group of employers who could gain a status of an employer-user, opening the possibility to employ temporary agency workers by employer-users who undertook collective redundancies<sup>47</sup>.

Other initiative is the one of the PFHR, SAZ and OKAP. Those employers organisations elaborated an “**ethical codes**” for its membership organisations which among others regulate employment relations, working conditions and non-discrimination principles in the sector<sup>48</sup>. Also, in 2014, the Lewiatan Confederation (one of peak employers' organisations) together with the main employer organisations in the sector, PFHR, OKAP and SAZ, as well as the Ministry of Labour and Social Policy and the Chief Labour Inspector, initiated the Round Table of Temporary Work to start the discussion on **the code of conduct** and **certification of temporary work agencies**. Trade unions officially declined to join the roundtable in line with their back then prevalent policy of boycotting tripartite negotiations. Nevertheless, NSZZ Solidarność sent its 2012 proposal of legislative changes in the Act on Employment of Temporary Workers for discussion during the Roundtable. Following the Roundtable, a tripartite expert team to discuss the desirable regulatory changes was established by the Ministry of Labour and Social Policy by the end of 2015. It involves employer organisations (PFHR, OKAP, SAZ, Lewiatan), representative trade unions (NSZZ Solidarność, Trade Union Forum, the All-Poland Alliance of Trade Unions) and the representatives of Ministries of Labour and Social Policy, Ministry of Justice and Ministry of Economy. The results however are yet to be seen.

Lastly there is also an important role of **European social dialogue** in negotiations on TWAs because it supports the communication between social partners. For instance, an important venue in which our informants from PFHR and NSZZ Solidarność met was the Sectoral Social Dialogue Committee on Temporary Agency Work at the European Commission level.

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<sup>47</sup> It was not clear from our interviews whether these changes presented the result of a compromise between by trade unions and the employers' organisations in the sector.

<sup>48</sup> PFHR: <http://www.polskieforumhr.pl/polskie-forum-hr-kodeks-etyczny>, SAZ: <http://www.saz.org.pl/kodeks-postepowania-czlonkow-saz/>, OKAP: <http://www.okap.org.pl/kodeks-etyczny.html> (accessed on 20 December 2015).

**Table 22. Postulates of trade unions and employers organisations concerning the TAW employment**

Trade Unions (NSZZ Solidarność)	Employers' Organisations (PFHR)
<b>Agreement</b>	
To increase the control over TWAs by the state by introducing sanctions in case of the misuse of civil law contracts by TWAs	To increase the control over TWAs, by obliging TWA to prove that they do not have any overdue payments, for instance to social security system;
To reduce the use of civil-law contracts in the sector (agreement in terms of the goal, disagreements in terms of means/tools to do it)	To introduce a minimal financial guarantees required to start a temporary work agency in order to consolidate the market
	To secure equal treatment of temporary workers with respect to sick benefits (the postulate that sick benefits should depend on the length of the temporary employment contract)
<b>Disagreement</b>	
To apply equal maximum employment periods (18/36 months) for temporary agency workers with civil-law contracts and employment contracts	To extend the maximum employment period of temporary agency workers to 24 months (or - a "German model" of open-ended employment contracts)
To extend the rights provided by the Act on employment of temporary agency workers employed with employment contracts to those with civil law contracts (equal treatment principle)	To abolish or soften the ban on the employment of temporary agency workers in "particularly dangerous jobs"
To introduce the presumption of employment relationship between temporary agency worker and employer-user if the employee works longer than 18 month for one employer-user.	To open the possibility of employment through TWAs in the public sector (by changing the regulations on the VAT)

*Source: Authors' own study based on interviews (I14, I15, I16).*

As of the postulates of trade unions and employers organisations concerning TAW employment (see table 22), we can see that although there are some common goals, there are also significant discrepancies between both parties, and some of their shared postulates have also been questioned by the government. While trade unions and employer organisations seem to agree on the issues of financial guarantees for temporary work agencies and the need for reduction of the use of civil-law contracts in the sector, the points of disagreement include:

- trade unions do not agree to extend the maximum employment period to 24 months and abolish the ban on employment of TAWs in dangerous jobs (**I14**);
- employer organisations and the representatives of the government disagree with the unions' postulate to apply the principle of equal treatment of temporary workers employed with employment contracts and civil law contracts (claiming that it would privilege workers employed with civil law contracts through TWAs against those directly employed with the civil law contracts by companies) (**I14, I16**);
- the representatives of the government question the idea of introducing the required financial guarantees for TWAs as it might contradict the principles of freedom for economic activity (**I14, I15, I16**);
- the representatives of the government do not agree that there can be the presumption of employment relationship between temporary agency worker and employer-user if an employee works longer than 18 month for one employer-user (the employment relationship can only be stated by the labour courts, it cannot be presumed) (**I16**).

When it comes to some positive examples of the tools used by unions to organise temporary agency workers, two of them can be mentioned: 1) the inter-company union organisations

(commissions); 2) a milieu (based) union organizations (commissions). As of the first example, apart from what has already been mentioned in the case of the steelworks industry (see section 7), the authors' previous research (Pernicka et al. 2015) describe similar initiatives in the General Motors (Opel) and Volkswagen plants in Poland. In both automotive companies, unions (NSZZ Solidarność) organise, represent and cover (guarantying most of the benefits from the Company's Social Fund) workers employed by TWAs, and they actively put pressure on the employers to directly hire those TWAs employees who reached indicated level of qualifications and experience. The second example concerns two small radical trade unions: the All-Poland Workers' Trade Union Confederation of Labour and All-Poland Trade Union Workers' Initiative. Both unions included in their internal statutes a tool of a milieu (based) union organisations which enable them to include employees with different types of contracts (both Labour Code contracts and non-Labour Code contracts) and secure the participation of the unemployed, students and economically inactive housekeepers. Still, the examples of the involvement of the TAWs in trade unions are limited. .

#### **10.4. Conclusion**

The Temporary Work Agencies sector can be characterised as rather fragmented and unstable one. The employment in the sector in Poland can be defined as insecure, low-qualified and low-paid and predominately used in the manufacturing. Looking merely at the employment figures in the sector, it might seem that it is rather a insignificant part for the whole labour market. However, as some of our informants remarked, it has quite a great influence on the precarisation of employment at large. Its impact on the labour market dualisation is also a result of employers' search to by-pass the regulations on the TWAs, It follows, paradoxically, from both too strict regulations (e.g. those concerning "particularly dangerous" jobs) or too little regulations (e.g. regarding the use of subcontractors instead of the TWAs or regular employment). These major problems triggered social partners initiatives aimed at improving sectoral regulations. For trade unions, the goal was mainly to reduce the level of uncertainty of the TWAs employment and its overall scope and, much more rarely, to include and/or cover temporary agency workers by union activities. In the case of employers, the strategy was focused on separation, in the sense of maintaining separate regulations for the TWAs employment, and the combination of reduction of civil law employment with the expansion of the TWAs sector as such.



## PART III: COMPARATIVE EVALUATION AND CONCLUSIONS

### 11.1. General remarks

One of the main goals of the PRECARIR project was to explore the mechanisms of the dualisation of labour market and social partners' approaches to counteract it in the context of post 2007+ crisis situation. Looking at the general cross-sectoral trends, we can observe some common patterns emerging.

Firstly, the impact of the crisis on the dualisation of employment can be observed in all sectors studied. However, the roots of precarious employment are much earlier than the 2007+ crisis and reflect some more general, political and economic features of the Polish transformation, including the dominance of the low-labour costs competition model in the private and public sector, the efforts to flexibilise Labour Code in early 2000s., the conditions of the Poland's accession to the European Union and the public services reforms since late 1990s. From this perspective, the protracted economic crisis of late 2000s and further flexibilisation of employment conditions as a part of anti-crisis legislation just added an additional factor to the existing labour market dualism in Poland.

Secondly, in all researched sectors there is a limited leverage of social dialogue on counteracting negative effects of the dual labour market. This problem derives mostly from rather low trade union and employers' organisations density on the sectoral level and their low influence on membership organisations (in particular, in the case of employers). Consequently, there is a limited (or sometimes no) influence of social partners' actions on the employment situation in the sectors. As a result, the specific feature of the Polish case is that the responses of social partners to the issues related with precarious work are generally stronger at the national and company level than at the sectoral level.

Thirdly, we can notice that loosing their structural power at the workplace and structural levels, trade unions began to rely mostly on “soft” measures, i.e. on their possibilities to influence the circulation of ideas through media and social campaigns. Thus, except for the steelworks sector in which the unions still represent the majority of the regular workforce, we can observe a long-term shift of union approaches from building on their structural and organisational power to relying more on their capacities to shape ideas and discourses in the public sphere, i.e. their discursive power. Here, the best example is the retail sector in which union density is low but trade unions use different tools to change public opinion on the conditions of employment in the sector.

Fourthly, the institutionalisation of union instruments and strategies of counteracting precarisation of employment, especially among the main trade unions, remains limited. There are no deliberate and planned strategies on the sectoral level to organise precarious workers. The notable exceptions are small, radical unions, such as the All-Poland Trade Union Confederation of Labour and All-Poland Trade Union Workers' Initiative, as well as some company-level commissions of NSZZ Solidarność, which elaborated the tools creating the possibility to join their organisations for those who are self-employed, with civil law contracts or employed by the TWAs. However, the dominant union approaches involve activities aimed at the forcing legislative changes at the national level to enhance the situation of precarious workers and, in the last instance, eliminate precarious employment as such from the economy.

Finally, in the case of employers' organisations, their associational weaknesses coupled with their lack of interest to engage in supra-company collective bargaining, translates into rather limited involvement in the actions aimed at counteracting precarisation at the sectoral level. However, we can also note some differences in the sectors studied. In the retail sector, there is a profound lack of any bi-partite (and tripartite) initiatives and the main employers focus is on narrowly understood and weakly enforced corporate social responsibility. In steelworks, the erosion of long-established

traditions of sectoral-level social dialogue took place. In health care, employers remain highly disorganised and, until recently, rather uninterested in counteracting precarious employment through sectoral-level social dialogue, also as a result of very limited legal and economic incentives to engage in the latter created by the state. Finally, in construction and temporary work agencies, employer organisations acknowledge the need for social dialogue aimed at counteracting too far-reaching employment dualisation as the latter seems to be harmful for both their businesses and public image. However, the outcomes of their more favourable approaches to social dialogue are still rather limited.

## **11.2. Different forms of dualisation in the sectors' studied**

One of the main outcomes of the research is the analysis of the various ways in which the dualisation of labour market took place at the sectoral level in five sectors: health care (hospitals), metal sector (steelworks), construction, retail and temporary work agencies.

In the health care sector, we can observe the emerging public-private market of health care services, resulting from a long-term process of their privatisation and commercialisation followed by the deregulation and flexibilisation of employment. The main forms of precarisation of employment emerged, firstly, with the outsourcing of the non-medical staff and, secondly, with the self-employment of doctors, nurses and allied medical personnel which intensified in the late 2000s. It resulted in the decomposition of interest of particular occupational groups as well as the limited union organisations in the private sector coupled with the lack of employers' representation in the public sector.

In the steelworks industry, the main forms of precarisation of employment include high wage differentials between regular and outsourced workers and the flexibilisation of working time for the latter. The practices of outsourcing, which bypass the regulations of temporary work agencies in Poland, are founded on several factors, including the side effects of the conditions of the European Union enlargement (the need to reduce of the amount directly employed workers), the outcomes of the 2007+ economic crisis (the second wave of job losses in the sector) and the crisis of sectoral level social dialogue.

The process of dualisation is a long-term feature of the construction sector which can be interpreted as the result of a long chains of subcontracting, involving mostly small and micro enterprises, and the tradition of unregistered employment (and wages). However, it was deepened in the wake of the global financial crisis and savings measures undertaken by the companies. The common forms of precarious employment are bogus self-employment and temporary employment, and the still-existing problems of unregistered work.

In the retail sector, the dualisation of the labour market was an outcome of the crystallisation of two main segments of the sector: on the one hand, large multinational corporations and, on the other hand, small and medium enterprises which underwent the process of integration by larger capital groups. Thus we can observe to parallel processes of dualisation. In the first segment, it concerns the use of TWAs and increasing number of part-time jobs in the largest retail chains, in the second segment, the use of franchise and the spread of self-employment resulting in job instability and low wages; in addition, there is also an issue of unregistered income in small and micro companies. Both segments are either low unionised or there are no trade unions at all (especially in the case of the self-employed).

The last analysed sector – temporary agency work – is characterised by high fragmentation of the market (a large number of small agencies as well as their short survival rate) and the vast flexibilisation of the employment, in particular in terms of job, wage and working time insecurity. We can also observe the spread of civil law employment, in particular by smaller temporary work agencies. Paradoxically, the dualisation in the sector can also be interpreted as a side effect of its imperfect regulation. For example, some employers, in order to overcome such obstacles as the ban on employment via TWAs in “particularly dangerous jobs”, outsource a part of their workforce to subcontractors who are not registered as TWAs.

**Table 23. Cross-sectoral comparison of precariousness and social partners' responses**

Sectors	Labour Market dualization  Trends/why	Forms	Dimensions	Trade unions	Employers' Organizations	Others
<b>Health care (hospitals)</b>	Yes/ labour force shortage; commercialisation & privatisation led by hospitals' debts → public/private market; incoherent MGT system in public sector	Self-employment growth (+66%) + hybrid employment (public/private); outsourcing of non-medical staff	High wage differentials (doctors vs nurses&midwives); work intensification due to hybrid employment and additional administrative work	<b>Inclusion</b> (union members on hybrid employment)/ <b>Elimination</b> (2011 lobbying for legislative changes limiting civil law employment for nurses&midwives) + <b>status quo</b> (doctors + part of nurses&midwives)	No rep. EO in the public sector; support for <b>expansion</b> of non-Labour Code employment in the private sector	a) State: <b>status quo/expansion</b> (tolerated expansion of civil law employment in the public sector); b) decentralised collective bargaining
<b>Metal (steelworks)</b>	Limited/ high union density (50%); market consolidation (70% owned by ArcelorMittal); reduction of work force (by 1/3 in 2006-13 )	Outsourcing (to bypass regulations on TWAs on performing dangerous jobs) and subcontracting following restructuring (up to 30% of workforce in the sector)	High wage differentials (outsourced vs regular workers - up to 50% differences); job insecurity (outsourced labour force)	<b>Separation</b> → <b>Inclusion</b> (outsourced workers)/ <b>Reduction</b> + <b>elimination</b> (efforts to transfer outsourced workers to regular workforce)	Refusal of answer by EO: “no flexible employment in the sector”, support for <b>expansion</b> / <b>status quo</b> (acceptance of up 30% level of flexible/subcontracted workforce in largest companies)	a) company level experiments to organise workers in subcontracted / outsourcing companies; b) Company-level agreement in AMP; c) the end of sectoral level agreement in 2009
<b>Construction</b>	Yes/ labour force shortage; low union density (3%); long chain of subcontracting	Temporary employment contracts (40%); self-employment (22%); informal work (30%);	High share of employment below minimum wage (28%); 33% of low-wage earners; hybrid wages (formal + informal payment);	<b>Exclusion</b> of temporary&self-employed from membership <b>Elimination</b> of atypical employment (except for regular	<b>Separation</b> (precarisation offloaded to subcontracted companies) <b>Reduction</b> (in the case of public sector	a) Bi-partite agreement on the minimum estimate wage (recommendation); b) multi-partite agreement on the

			extended working time;	self-employment)	contractors)	health and safety conditions in construction (10 largest employers); c) changes in public procurement act (social clauses); d) decentralised collective bargaining
<b>Retail</b>	Yes / different sources/mechanism in large MNCs (retail chains using TWAs, part-time) and SMEs (mostly Polish, currently in the process of integration by larger capital groups/distribution centres); low union density (2%, mainly in hypermarkets)	Part-time employment (retail chains/large shops/discounts) + TAWs (>10-12%); dependent self-employment and civil law (franchised shops integrated by larger Polish and, rarely, international capital groups ); importance of informal work and “envelope payment” (SMEs)	Job insecurity (high turnover); 38% of low wage earners; uncertainty of working time (extended reference period for calculating working time in large shops >3 months)	<b>Exclusion</b> with some elements of <b>inclusion</b> (unions claim to represent all workers; part-times and temporary employed among union members in hypermarkets/discount shops). <b>Elimination</b>	<b>Inclusion / Reduction</b> ((too high job rotation harmful for business)/ <b>Expansion</b> (acceptance of precarisation in franchised shops, TWAs and part-time in retail chains)	a) no sectoral level sectoral dialogue/collective bargaining; b) cooperation agreements (TUS & employers in 4 MNCs)  c) CSR by employer organisations (business interest in reducing high job rotation);
<b>TAW</b>	Yes/ high fluctuation of companies & high market fragmentation;	Highly flexible employment as a standard (700 thousand employees of around 160 thousand FTE + shifting WF among agencies); 56% with civil-law contracts	Job and working time insecurity; generally low-wage sector (highest share of low wage earners)	<b>Exclusion</b> and (rare examples of) <b>inclusion. Reduction</b> (as a pragmatic strategy) → <b>Elimination</b> (at the political level)	<b>Separation</b> (special regulations on TAWs, different from LC) / <b>Reduction</b> (civil law employment) + <b>Expansion</b> (of TAWs in general)	a) Round-table on Temporary Work (EOs & state rep.) → Tripartite team in 2015 b) Ethical codes elaborated fighting unfair competition and market fragmentation (all 3 EOs)

### 11.3. Different trade union and employer strategies in the sectors

The cross-sectoral comparison of the social partners approaches and strategies (see table 23) indicates a twofold tendency. On the one hand, trade unions usually adapt the strategy of elimination of precarious work combined with (rather reluctant) inclusion of selected categories of flexible workers. On the other hand, employers promote the approach of maintaining a *status quo* of the long-term process of labour market flexibilisation (triggered and developed earlier than 2008), while simultaneously striving for the reduction of its negative effects in the cases, in which they become harmful to their interests, and the expansion of flexible employment in other parts of economy. However, we were also able to reconstruct a number of positive experiences of developing tools and approaches aimed at reducing precariousness in the sectors studied. They can be divided into three groups: (1) tripartite initiatives; (2) bi-partite initiatives, and (3) unilateral trade unions' actions.

The first group consist of such examples as: 1) the development of the tripartite expert team on temporary work agencies by the Ministry of Labour and Social Policy (see chapter 10); 2) the changes in the Labour Code regarding temporary employment contracts at the national level (see chapter 5); 3) the changes in the Public Procurement Act as the results of negotiation of in the construction sector (see chapter 8).

In the case of bi-partite initiatives, we can name four positive examples of counteracting the process of precarisation of work: 1) the setting of the minimum estimate wage in the construction sector (see chapter 8); 2) a very recent joint proposal of employer organisations and trade unions in the health care sector regarding referential ratio of wages which could regulate the wages tariffs for medical personnel (see chapter 6); 3) the national level initiative for the reforms of the Tripartite Commission in order to create broader prerogatives of the Social Dialogue Council (see chapter 5); 4) a rather informal communication between social partners in the TWAs sector which rely on experts, however heading towards its institutionalisation at the the tripartite level (see chapter 10).

As of the unilateral initiatives, our analysis allows us to list four instances of trade unions' actions which occurred to be most successful: 1) the inter-company union organisations covering temporary work agencies and subcontracted companies in the steelworks industry (see chapter 7); 2) the milieu-based commissions of trade unions: Confederation of Labour and Workers' Initiative, embracing employees with different types of contracts and unemployed, students or economically inactive people (see chapter 10); 3) the union organising campaigns of NSZZ Solidarność in the retail sector since the late 1990s, with its peak in the mid 2000s, followed by the successful awareness raising campaigns at the sectoral level and national level (see chapters 5 and 9); 4) the verdict of Constitutional Tribunal deeming the limitations of union membership as unconstitutional and thus opening the possibility to unionise for persons working on civil law contracts, as the result of the motion of the All-Poland Alliance of Trade Unions (see chapter 2).

The analysis of the five researched sectors also indicated several negative experience regarding the reduction of precarisation of work: 1) refraining from taking positions on the issues of employment and precarious work by employer organisations in the retail sector and steelworks industry (see chapters 7 and 9); 2) progressive decentralisation of collective bargaining at the sectoral level in the sectors such as steelworks where it had relatively long and established traditions (see chapter 7); 3) limited coordination of social dialogue in the health care sector due to the incoherent managerial system and the encroaching discrepancies between the interest of the social partners in the public and private sectors. Those limitations arise from the limited representativeness and bargaining power of social partners, specific sectoral level circumstances as well as the state policies or economic developments (or their lack).

Looking at the cross-sectoral similarities we can also point to one major negative tendency of trade unions approaches towards precarious employment. In all researched sectors trade unions are unable or unwilling to work out a coherent and planned strategy which could help them to fight the precarisation of work. Examining the conducted interviews with the representatives of trade

unions, we can infer that although in most cases the problems connected to or resulting from the process of precarisation of work are recognised, it does not lead to coordinated actions and campaigns, especially with regard to organising the precarious workers – for instance there are no working groups which could develop such ideas and bring them into practice.

Last but not least, in the context of negative experiences of dealing with the precarious employment, it is necessary to mention the role of the state. First of all, our informants from both sides – trade unions and employer organisations – voiced their criticism of too limited involvement of the state in industrial policies and employment conditions in the researched sectors. They pointed to either bad regulation or no regulation as one of important causes of precarisation. Secondly, there are too little efforts and resources devoted to monitor the development of employment conditions in particular sectors. For instance, in the TWAs sector there are specific policies which require employers to report on their activities. Consequently, there is rather rich information on the scope and density of precarious work. On the contrary, in the health care sector or steelworks such state's practices are very limited. Thirdly, there is a vast problem of quite limited penalisation of breaches of the labour law. In fact, the most of our informants, especially trade unionists, emphasised that the main tool in fighting the precarious employment should be a better state intervention in tracking down and banning the practices of by-passing or breaking of the already existing regulations by the employers.

### 11.5. Policy recommendations

The final goal of the PRECARIR project was to develop a set of policy recommendations which could help social partners and state authorities to make a more effective use of social dialogue to counteract the negative effects of the labour market dualisation. Based on the interpretation of interviews and secondary data analysis carried out for the sake of the project, a number of such recommendations can be formulated:

1. Given its positive outcomes in some sectors, it is needed to reinforce bi-partite social dialogue. A greater involvement of the state authorities and public administration in facilitating, institutionalising, and enacting solutions elaborated by social partners seems to be necessary (e.g. minimum estimate wage in the construction sector). The revitalisation of the works of the tripartite teams within the newly established Social Dialogue Council, in particular with regards to their legislative initiatives aimed at the counteracting the dualisation of labour market, shall be an important step in this direction. The creation of the tripartite team on temporary agency work within the SDC would be a desirable consequence of the ongoing collaboration of social partners regarding the changes in the TWA regulation.
2. Counteracting of the further dualisation of the labour market is impossible without strong, representative and willing to cooperate social partners. It is necessary to elaborate and implement without any further delays legislative changes to enable all workers (regardless of the type of contracts) and self-employed to establish and join trade unions. It has to be combined with practical, legal and juridical support by unions, state and employers for those willing to organise. It is also necessary to promote business and social causes to counteract precarious employment among the affiliates to employer organisations, for instance by emphasising the advantages of having a long-term employed, committed and satisfied workforce as compared to short-sighted, low-cost competition.
3. In order to counter-act the ongoing erosion of their membership, the unions (on the sectoral level) need to establish working groups to deal with the development of common/more innovative strategies, tactics and tools, including those aimed at organising precarious and highly flexible workforce both within companies and outside them. There are already



existing good practices to follow, including inter-company union organisations and milieu-based trade union commissions. The attempts to organise temporary employees and self-employed have to be combined with more coherent, national and sectoral level efforts to stop the further dualisation of labour market by changing legislation and awareness-raising campaigns among workers, consumers and employers.

4. The support for sectoral social dialogue should be combined with reinforcing State Labour Inspectorate's (PIP) tools to control and penalise the breaches of labour legislation regarding bogus self-employment, the overuse of civil law contracts and bypassing the regulations on the temporary work agencies. The changes proposed by the Law and Justice government in 2016, which would give the possibility to control companies without a prior announcement and give the PIP prerogatives to change bogus civil law contracts into employment contracts, seem be important steps in this direction, The improved monitoring of the development of precarious employment by sectors by the Central Statistical Office and the Ministry of Family, Labour and Social Policy is necessary. At the present moment, precise, longitudinal datasets on the development of civil law employment and any estimates of the scope of bogus self-employment are missing.
5. Finally, it is necessary to replace chaotic, mostly reactive and very frequent changes in the labour law by new, coherent labour market and employment policies. The latter shall be developed in strict collaboration between the government and social partners. The idea of combating unemployment by any means and related permissiveness of the state with respect to the expansion of civil law and temporary employment proved to be short-sighted and created very high social costs. The social problems emerging can be minimised only by a decisive, qualitative shift towards employment policies explicitly based on the premises of counteracting labour market dualisation and promoting high quality jobs both in the private sector and the public sectors. Some of the regulations proposed by the new (Law and Justice led) government in 2016, including the minimum hourly wage in the case of freelance contracts and solo self-employed, clearly reflect trade union postulates. However, they clearly need a further consultation with social partners.

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